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ABSTRACT

This collection of background materials and guides is intended to assist Wisconsin educators involved in providing vocational experience programs for students with disabilities. Following an introductory section, the second section presents information on the following federal laws: Fair Labor Standards Act (FLSA); Individuals with Disabilities Education Act; Job Training Partnership Act; Carl Perkins Vocational and Applied Technology Education Act; Americans with Disabilities Act; Rehabilitation Act; Social Security Act; and School to Work Opportunities Act. The third section explains Wisconsin legislation concerning compulsory school attendance, education for employment, youth apprenticeship, technical preparation, youth employment and Wisconsin's child labor laws, and vocational program access for students with disabilities. The fourth section addresses the application of federal and state child labor laws to vocational experience programs and covers: work permits, attendance, wage regulation, special minimum wage licenses, child labor requirements under the FLSA, safety guidelines, employment generally prohibited to minors, nonpaid work experiences, insurance, and transportation. Section 5 offers guidelines and forms for determining the quality of vocational experience or work-study programs for students with disabilities. Section 6 gives suggestions for conducting functional vocational assessments covering functional evaluation components, placement strategies, task analysis, teaching strategies, and the transition component of the Individualized Education Program. Appendices provide federal regulations concerning the FLSA and child labor, application forms, and U.S. Department of Labor policy letters on legalities of volunteer activities. (Some sections contain references.) (DB)

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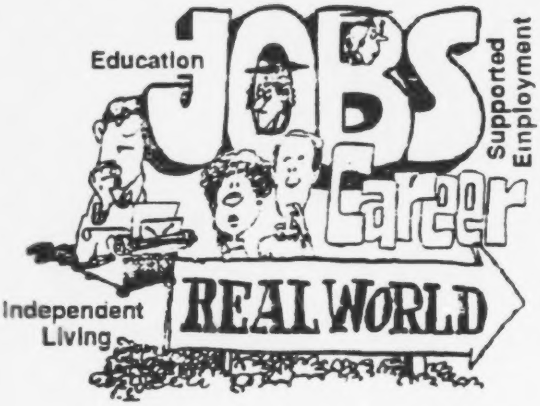
VOCATIONAL EXPERIENCE PROGRAMS FOR STUDENTS WITH DISABILITIES



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PROGRAM GUIDELINES

VOCATIONAL ASSESSMENT

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VOCATIONAL EXPERIENCE PROGRAMS FOR STUDENTS WITH DISABILITIES

Edited by Ann Kellogg, Transition Consultant, WI DPI

I. RATIONALE

In our society, an individual's status is determined by her or his job, which fact is readily apparent to people with disabilities. Even more significant, however, is the human need to achieve, be productive and be self-fulfilled. As Kenneth Hoyt, former U.S. Commissioner for Career Education, stated, "Work is properly viewed as a human right, not a societal obligation." However, the "National Longitudinal Transition Study of Special Education Students" reveals that only 67% are employed four years after leaving school and the majority are employed part time and at minimum wage. By comparison, however, among all adults with disabilities in the U.S., 67% are **unemployed**. (Taylor, 1986) It appears that, at least within the last six years, special education services has had a positive impact upon reversing the unemployment ratio of its graduates.

It is important to note that for most students with disabilities (who have difficulty generalizing learning from one environment to another), most job skills can only be learned in the actual job situation; and the best predictor of a disabled student's successful employment after high school is a **paid** job during high school. However, only 3% of high school students are enrolled in formal combined school/work programs and both parents and schools underrate the importance of these vocational education experiences in preparing students with disabilities for employment. (Taylor, 1989)

It is becoming increasingly clear that 'vocational' experience programs are a very valuable and valid component of our secondary school systems. Maintaining an effective community based vocational program requires a strong district commitment, allocation of **qualified** personnel and flexibility in staff and student scheduling. This booklet will describe various options and legal requirements for vocational experience programs but, at the outset, we want to emphasize the necessity for community experiences to be provided in concert with vocational education.

Lest we forget, "vocational education" is defined as special education in the Individuals with Disabilities Education Act (IDEA). The Carl Perkins Vocational and Applied Technology Education Act defines vocational education as

> "organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or

> advanced degree. Such programs shall include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education." (PL 101-392)

An authentic vocational experience program provides certified vocational instructors, individually tailored and curriculum based vocational assessment, vocational curriculum based on local labor needs, vocational placements matched to student's interests and skills, supervision at vocational sites, instruction coordinated with vocational activities, assignment of credit for successful vocational experiences, and weekly evaluation of students' progress to insure appropriate and successful vocational experiences. Obviously, all these vocational components extend far beyond the purview, skills and resources of the special education teacher and must include services from vocational, guidance and career education staff, the work/study coordinator, Local Vocational Education Coordinators (LVECs), Designated Vocational Instructors (DVIs), the Education for Employment Coordinator, the JTPA coordinator, community vocational agencies (DVR, PIC), and employers.

The term "vocational experience" as described in this booklet, assumes work site based activities for all students. These vocational experiences can be grouped in four categories:

1. Vocational exploration
2. Vocational assessment
3. Vocational training
4. Work/study or actual employment

II. FEDERAL LEGISLATION

A. Fair Labor Standards Act (FLSA)

Originally passed in 1938, the FLSA is the cornerstone of all legislation relating to employment in the U.S.

- Enforced by U.S. Dept. of Labor
- Protects employees from exploitation
- Prohibits unsafe working conditions for child labor
- Requires minimum wages
- Limits hours of employment for 14 and 15 year olds
- Requires overtime pay
- Monitors child labor restrictions

This law applies to virtually all employees in the country (with a few thoroughly prescribed exceptions) irrespective of disability, student status, race, gender, etc. (See Appendix A for the USDL publication "Employment Relationship Under the Fair Labor Standards Act;" and Appendix B for the publication "Child Labor Requirements in Nonagricultural Occupation Under the Fair Labor Standards Act.") The following article, reprinted with permission, explains the relationship of the FLSA to school vocational programs for students with disabilities.

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The Association for Persons with Severe Handicaps

1. School-Based Vocational Programs and Labor Laws: A 1990 Update

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The Children's Hospital, Boston, Massachusetts
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United States Department of Education
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This article describes how the Fair Labor Standards Act (FLSA) administered through the United States Department of Labor (DOL) governs school-based employment and vocational training programs. Particular attention is paid to the regulations regarding employment and training for students with disabilities. Because the FLSA was recently reauthorized with final regulations published in late 1989, this paper updates the ***Journal of the Association for Persons with Severe Handicaps*** *publication by Martin and Husch (1987) on the same topic. It further explains and interprets situations that are often misunderstood by educators and employment specialists through a series of case studies typical of school-based vocational programs for students with severe handicaps. Finally, suggestions for reform in federal and state policy as a result of counterproductive provisions of the FLSA are presented.*

DESCRIPTORS: adolescents, community-based, competitive employment, functional assessment, job assessment/placement, legislation, natural environment, vocational environment, vocational rehabilitation, vocational training

In state-of-the-art practice, it is accepted that students with severe handicaps receive training in community job sites as a regular part of their high school program (Brolin, 1982; Gaylord-Ross, 1989; Moon, Inge, Wehman, Brooke, & Barcus, 1990). In fact, there is now an abundance of literature describing how to create both paid and unpaid work and training sites in the community for school-aged trainees or employees (Moon et al., 1990; Pumpian, Shepard, & West, 1989; Stainback, Stainback, Nietupski, & Hamre-Nietupski, 1986). Although schools (and all other agencies) that implement work or employment training programs must adhere to the rules and guidelines of the Fair Labor Standards Act (FLSA) administered through the United States Department of Labor (DOL), there are few resources available for correctly interpreting these complicated regulations. Martin and Husch (1987) provided one of the only sources that has attempted to describe the relationship of labor rules and regulations to school-based vocational programs. Because the FLSA was amended in 1989 (United States Department of Labor, 1990), an update on the law's relationship to governance of school employment training programs seems in order.

Understanding the Fair Labor Standards Act

What is the FLSA?

The FLSA, first enacted into law in 1938, empowers the DOL to administer and monitor child labor, minimum wage, overtime pay, and wage and hour record keeping. School programs, sheltered workshops, and all other agencies administering covered work training programs must adhere to FLSA regulations. Of particular concern to all school and adult service work programs for employees or trainees with special needs are legal requirements relating to (1) minimum wage; (2) overtime; (3) child labor requirements; and (d) subminimum wage certification.

Both the federal office of the DOL and regional offices across the country have information packets and forms regarding the requirements mentioned above.

The authors wish to thank Mr. Corey Surett, Boston District Director, at the United States Department of Labor, Wage and Hour Division for his help in reviewing the content of this manuscript. We would also like to thank Ms. Maggie MacDonald, Regional Section 14 Specialist at the New England Regional Office of the United States Department of Labor, for her tireless efforts in helping us and others understand the DOL regulations. Finally, we want to acknowledge the efforts of Ms. Robin Friedlander and Mr. Renaldo Cheek in helping special educators in Massachusetts to work within the constraints of state labor regulations.

The work on this article by Dr. William Halloran was done privately. No official support or endorsement from the United States Department of Education is intended or should be inferred.

Requests for reprints should be sent to Dr. M. Sherril Moon, who is now at the Department of Special Education, 1308 Benjamin Building, University of Maryland, College Park, MD 20742.

[More information, such as the *Handy Reference Guide to the Fair Labor Standards Act* (United States Department of Labor, 1987), may be obtained from a regional compliance specialist or by writing to the United States Department of Labor, Employment and Standards Administration, Washington, D.C. 20210.] It is important that vocational educators get to know their regional compliance specialists and confirm the legality of any training or work sites in the community before implementation. With community-based training for students with special needs becoming more commonplace, compliance monitoring by the DOL will likely increase (Martin & Husch, 1987). If a site is in violation, the employer will be liable for back wages. Child labor violations also bring civil monetary penalties. Relations between schools and employment sites may be permanently damaged if relevant laws are not followed.

The relationship of recent amendments to school employment training programs. Amendments to the FLSA that have most affected school programs and programs serving persons with disabilities were enacted in 1961, 1974, and 1986 (United States Department of Labor, 1962, 1975, and 1986). These changes dealt sequentially with the six criteria related to trainees and student trainees, the initial 3-month participation of students with mental retardation in school work programs, and the special work certificate that allows persons with disabilities to work for less than minimum wage. The 1989 amendments do not directly change any previous regulations pertaining to school-based vocational programs for persons with disabilities. However, it is important to understand some of the changes, such as minimum wage rates. For example, as of April 1, 1990, the minimum wage rate moved to $3.80 per hour. As of April 1, 1991 it will move to $4.25 per hour (United States Department of Labor, 1989a). Other changes are outlined briefly in Table 1.

The relationship of FLSA to state labor laws. Many states have their own labor laws that differ from FLSA regulations on minimum wage, hours, subminimum regulations, and specific guidelines for school-based work training programs. In those cases in which school-aged workers or trainees are involved, whichever law provides more protection or sets higher standards applies. In some cases, the state law would override the federal guidelines. Consequently, it is important that school training programs be in compliance with both state and federal standards.

When Does FLSA Apply?

The FLSA applies whenever there is an "employment relationship." Generally, any work site involved in interstate commerce (workers produce, handle, or sell goods delivered across state lines) are covered by either FLSA or state labor laws. [Questions about the applicability of FLSA should be directed to the labor department. Martin and Husch (1987) also delineated nine steps to determine FLSA coverage.] The problem for school or other agency work training programs is in determining if there is an "employment relationship." When such a relationship exists, the student must be paid minimum wage or prevailing wage and is subject to overtime wage. There are six criteria the DOL uses to determine a nonemployment relationship. If these six criteria are satisfied, then the FLSA does not apply. In this situation, the student is viewed as a trainee and no wages have to be paid. There is considerable misunderstanding in the interpretation of these criteria by vocational and special educators. It is critical to check with the DOL before beginning an unpaid community job placement, even if it is short term or for assessment purposes only.

The six criteria, *all of which must exist*, that determine a nonemployment relationship include (United States Department of Labor, 1962):

(1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
(2) the training is for the benefit of the trainees or students;
(3) the trainees do not displace regular employees but rather work under their close observation;
(4) the employer that provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer's operations may actually be impeded;
(5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
(6) the employer and the trainees understand that the trainees or students are not entitled to wages for the time spent in training (10b11(b) of the Wage-Hour Field Operations Handbook).

If the employer benefits from the work being done, the FLSA would apply and the student must be paid. For example, if a student and her employment training specialist (i.e., the teacher who is doing job training) are performing a job duty together and are doing it in place of the regular employee who is now doing something else, the employer is benefitting by having extra employees to perform more work. In this case, the student must be paid.

There is a misconception that if the work experience is stated as a goal in a student's individualized education plan (IEP), then the FLSA does not apply. Even some written explanations of labor laws have misinterpreted this relationship. For example, Martin and Husch (1987) included as part of the six FLSA criteria suggesting an employee-trainee relationship a statement, "The training is consistent with the goals of the individ-

Table 1
Outline of Changes in FLSA According to 1989 Amendments

Training Wage	Under certain conditions employers can pay employees under the age of 20, a rate of at least 85% of the minimum (but not less than $3.35 per hour) for up to 90 days. An employee who has been paid at the subminimum wage for 90 days can be employed for 90 additional days by a different employer, if that employer provides on the job training in accordance with rules to be issued by the Department of Labor. Employers are prohibited from displacing regular employees in order to hire employees eligible for the subminimum wage. A maximum of one-fourth of the total of all the establishment's employees' monthly hours can be paid at the subminimum rate. The training wage provision expires 3/31/93.
Tip Credit	Employers can take a tip credit of up to 40% of the minimum wage for certain tipped employees. This increases to 45% on 4/1/90, and to 50% on 4/1/91.
Remedial Education	Employers may employ employees who lack a high school diploma or who have not attained the educational level of the 8th grade, for up to 10 hours over 40 in a work week without paying overtime if the employees are provided with remedial reading or other basic skills during such hours. The training must not be job-specific. This provision is effective immediately.
Civil Money Penalties	Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements become subject to civil money penalties of up to $1000 per violation. (The civil money penalty provisions for child labor violations were not affected by the Amendments).
Administration and Enforcement	Wage-Hour will draw upon the experience of other DOL agencies that administer programs regulating employment and training. Our objective will be to provide protection to the trainees while placing minimum paperwork and reporting burdens on employers. We will also, as required by the Amendment, receive input and assistance from the House Education and Labor Committee and the Senate Labor and Human Resources Committee.

Note. This list was adapted from a larger list published by the United States Department of Labor entitled *Fair Labor Standards Amendments of 1989* (Rev. 12/11/89).

ualized education and/or transition plan, (p. 141)" as the first criterion. This is not what the law says. Even when the work experience is described in an IEP, if the employer derives immediate advantage from the activity of the student, an "employment relationship" exists, and the student must be paid. The regulations of PL 94-142 in no way override or include FLSA standards, and it is important both to include work training in the IEP and to make sure the six trainee criteria are met.

Special Considerations for Students with Mental Retardation

The DOL has established that initial participation in a school work program by students with mental retardation would not constitute an employment relationship under certain conditions. These conditions are basically encompassed under the six criteria delineated earlier but are redescribed separately by the DOL (United States Department of Labor, 1989b). The conditions under which a school work program does not have to pay a wage to a student with mental retardation are:

(1) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the students. The student may receive some payment for his or her work in order to have a more realistic work situation, as an incentive to the student, or to ensure that the employer will treat the student as a worker.

(2) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed the time the student would be required to attend school if following a normal academic schedule. Time in excess of 1 hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial.

(3) The student does not displace a regular employee or impair the employment opportunities of others by performing work that would otherwise be performed by regular employees who would be employed by the school or an independent contractor (for example, employees of a contractor operating the food service facilities at the school [10b03-3 of the Wage-Hour Field Operations Handbook]).

The DOL also asserts that an employment relationship may occur shortly after a placement or at any point later on. As a general guide, an employment relationship would begin for a student with mental retardation *after 3 months*. In other words, if the three above conditions regarding participating in a school work program are met, a trainee would not have to be paid for the first 3 months. This does not mean that a student can be moved from job to job every 3 months to avoid payment of wages, although many have interpreted this regulation in such a fashion. For example, Martin and Husch (1987) stated, "If at the end of 3 months the student learns the skills needed for the job, he or she should seek employment in that job (if age requirements are met) or become involved in a different training experience. If the student does not learn the needed skills in 3 months and the experience is still beneficial, new individualized education plan objectives and timelines need to be established (p. 142)."

In fact, becoming involved in a new training experience does not mean that the 3-month training period can begin again. Each student with mental retardation has only one 3-month initial training period. After that, a student must be paid, regardless of whether he or she has changed jobs or job sites unless the six employer-trainee criteria are met. Technically, the 3-month period only applies to students with mental retardation. For students with other disabilities or for those without a disability, the six trainee criteria must be met from the beginning of the placement. Restrictions would depend on the age of the student, the type of job performed, and whether training occurred during school hours. Because of differences in interpreting the regulations regarding training and employment for students in special education programs, one should *always* call the Regional Labor Office, Wage and Hour Division, and check with the Section 14 Compliance Specialist before making a community placement for assessment or training.

FLSA Child Labor Age Requirements

Child Labor Laws under FLSA (United States Department of Labor, WH Publication 1330, September 1985) spell out specific standards for employment of youth 16 years of age and older and for children who are 14 and 15 years old. There are also special guidelines for school-run work experience programs for students 16 years old and older and for those who are 14 and 15. Since noncompliance with any of these regulations can result in a fine on employers of up to $10,000 per employee, it is critical that program directors understand age requirements before making community paid job placements. For specific information, the reader should write to the DOL and request materials on Child Labor Laws such as WH Publication 1330 (United States Department of Labor, 1985). Highlights from these sources on Child Labor Laws are included here.

Child labor standards for 16- and 17-year-old youths. Youths ages 16 and 17 may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor. However, some states may set limitations upon the hours worked by 16 year olds. Hazardous occupations include: working with explosives and radioactive materials; operating certain power-driven woodworking, metalworking, bakery, meat processing, and paper products machinery; operating various types of power-driven saws and guillotine shears; operating most power-driven hoisting equipment, such as nonautomatic elevators, fork lifts, and cranes; most jobs in slaughtering and meat packing establishments; most jobs in excavation, logging, and sawmilling; roofing, wrecking, demolition, and shipbreaking; operating motor vehicles or working as outside helpers on motor vehicles; and most jobs in the manufacturing of bricks, tiles, and similar products. Exemptions from some of the hazardous occupation orders apply for apprentices and students in vocational education programs.

Child labor standards for 14- and 15-year-old youths. Youths ages 14 and 15 may work in various jobs outside school hours under the following conditions: no more than 3 hours on a school day, with a limit of 18 hours in a school week; no more than 8 hours on a non-school day, with a limit of 40 hours in a non-school week; and not before 7 a.m. or after 7 p.m., except from June 1 through Labor Day, when the evening hour is extended to 9 p.m.

Workers 14 and 15 years of age *may* be employed in a variety of jobs: office work; various food service jobs, including cashiering, waiting on tables, busing tables, washing dishes, and preparing salads and other food (although cooking is permitted only at snack bars, soda fountains, lunch counters, and cafeteria serving counters); sales work and other jobs in retail stores; errand and delivery work by foot, bicycle, and public transportation; dispensing gas and oil and performing courtesy services in gas stations; and most cleanup work. Some states may have restrictions on 14 and 15 year olds working in or around gas stations.

Minors who are 14 and 15 years old may not work in the following jobs: manufacturing, mining, most processing work, and all occupations declared hazardous by the Secretary of Labor; operating or tending most power-driven machinery; public messenger service; and work connected with warehousing, storage, transportation, communications, public utilities, and construction (except office and sales jobs when not performed on transportation vehicles or on construction sites).

School-based work experience programs. Any student, 16 years old and older, can work in nonhazardous jobs during the school day for minimum wage or higher without special permission or provisions other than any state or local laws mandating a certain number of hours to be worked during the school day. There are special FLSA provisions for students 16 years or older with handicaps who are participating in a school work experience program where students earn less than minimum wage. The DOL has an "Application for Special Worker Certificate" that a rehabilitation counselor or school official must submit. Employers can also obtain and submit directly the certificate if the student is on a company payroll. Regional DOL offices can provide forms and instructions for setting up work experience programs involving special certification for subminimum wage payment.

Students who are 14 or 15 years old may be employed during school hours if the school can obtain from the state a certificate to operate an approved Work-Experience and Career Exploration Program (WECEP). WECEP programs are designed to respond to the needs of students at risk of dropping out of school or who have educational disabilities. States that are participating in the WECEP program have a special certification process administered by the state department of education to which local school programs must apply. Interested people should check with their regional DOL office and state department of education to determine if they are eligible. It is important to remember that participating in any work experience program allows for paid work experience during school hours, but these special work experience programs do not pertain to unpaid training. Generally, students younger than 16 would not be employed during school hours, although they could be involved in "trainee" or unpaid work experience during school hours if the six criteria described above are met.

Work Experience Within the School

For younger students, in particular, some initial work experience within the school building or on school grounds can be very beneficial in determining work preferences and building endurance and basic social skills. The DOL has determined that as long as this work experience occurs directly for the school district and for periods of less than an hour per day on the average, then the DOL would not assert an employment relationship. If the work performed by a student is done for an outside vendor working within a school (e.g., private food service vendor providing school lunches), then all DOL regulations do apply and wages must be paid. In other words, students, regardless of age, can take part in brief in-school work experiences without payment of wage only when an outside vendor is not involved. Coordinators of such experiences may want to provide some type of training stipend or exchange incentive such as a free lunch just to instill the value of work.

Volunteer Work for Students with Disabilities

Individuals who have disabilities can volunteer their time and services in the same manner as individuals without disabilities. Generally, young people with disabilities would volunteer on a part-time basis outside of normal school hours to public service, religious, or humanitarian organizations. One must ask if the work is truly voluntary, if others who are not handicapped would ever volunteer to do this work, and whether under other circumstances someone would be paid for a similar service. For example, a volunteer food service position would be questionable since almost all food service work is performed for pay. On the other hand, working as an SPCA volunteer for an hour two Saturdays each month is a traditional volunteer job.

Interpreting FLSA Regulations: Case Studies

One way to understand better how FLSA regulations may affect individual training or employment situations is to see how it would apply to several students of different ages and with different special needs. The four case studies described here present typical questions and concerns that vocational and special educators have concerning FLSA application. The responses should provide some guidelines for similar situations.

Case Study 1

Ellen is a 14-year-old student with severe mental retardation. It has been determined that Ellen would be a good candidate for supported employment when she is older. Her teacher would like to start providing community-based work experiences in real job sites during the school day. The vocational education special needs coordinator, teacher, teacher's aide, Ellen, and Ellen's parents (IEP team) have agreed that work experience during school hours in three different environments over the 9-month school year would be an excellent way of helping Ellen develop some vocational preferences, work skills, and related social competencies. The team agrees to find placements in a grocery store, fast food restaurant, and business where messenger services or entry level clerical services are needed. Ellen will spend 6 hours each week, 2 hours per day on Monday, Wednesday, and Friday in her job. The grocery store bagging job will be the first placement and will last for approximately 3 months from October through December. Ellen's IEP goals reflect these placements, and specific objectives spell out the need for her learning social, vocational, and functional skills through this training.

Ellen's teacher finds a "training site" at a local supermarket, and the day manager agrees that Ellen and the teacher or teacher's aide can come to the store to bag groceries on Mondays, Wednesdays, and Fridays from 9:30 to 11:30 a.m. from October 5 through December 20. The teacher and manager draw up the following agreement:

(1) Because this experience is related to training

only and is part of the IEP, no pay will be provided to Ellen.

(2) The teacher or teacher's aide must be with Ellen on the job site at *all* times.

(3) The supervisor (teacher or aide) and Ellen will work with a cashier and bag groceries at the same pace as a regular bagger. It will be up to the teacher or aide to make sure the job is done correctly. The bagger who would have been working at Ellen's station for the 2-hour period will work with Ellen and the teacher to show them the job for the first 2 weeks. After that, he or she will be reassigned to another station or to stocking for that 2-hour period.

(4) If Ellen or the IEP team decides for any reason that this training placement is not appropriate, it can be terminated after October 25. Before October 25, a supervisor (teacher or aide) will perform the bagging job during the assigned period, regardless of Ellen's presence or performance. This will help the supervisor analyze the job duties and become a more competent trainer for some other student.

The questions here are, "Is this training site in compliance with the FLSA regulations? If not, why and how could it be changed to meet the standard?"

Case Study 1 Response

As established now, this training site would *not* meet the "trainee" criteria of FLSA. Specifically, as stated under (3) of the agreement, Ellen displaces a regular employee who can go on to perform other duties. Because this benefits the employer immediately, as does the fact that Ellen and her teacher will together perform the bagging job at a normal rate, this trainee (Ellen) would qualify as an employee. Because Ellen is younger than 16, she cannot be hired as an employee at this job unless she is a participant in a state approved school WECEP program.

It is possible to change the training site so that Ellen could receive training here. First, the agreement would have to specify that Ellen and her teacher would not replace the regular employee at the job. Ellen would have to work directly with a regular employee (shadow him or her) and perform in a manner that does not benefit, and may, in fact, impede, the employer. The agreement would also have to be changed to state that training Ellen and performing the bagging job, even if Ellen has left the site, is part of the teacher's job (for which she is being paid by the school system). The new training agreement would also need to specify that Ellen is not entitled to a job after training or after she turns 16, and that the trainee is not entitled to a wage. Also, because Ellen is under 16, she would need to stop training in this placement as soon as she learned the job duties. Because Ellen is mentally retarded and this is her first training placement, she has up to 3 months to receive unpaid training. If she were 16, the grocer could consider hiring her when she learned the job, as long as the school system approved the working hours.

Case Study 2

Bob is a 16-year-old high school student who experiences cerebral palsy and severe motor problems. Bob uses a wheel chair but has functional use of his right arm and hand. He has learned to use a computer for both communication and word processing purposes and is interested in a career in computer technology/management information services. Bob attends a regular high school program and has a personal care attendant who assists him at school. Bob has approached his guidance counselor about part-time paid or volunteer work in a job involving data management or word processing. He knows of several insurance companies and banks near the school that may be hiring. At this point, Bob is more interested in building his resume than in paid work, and would like to work 4 to 10 hours each week, either late in the school day after school from 3:00 to 5:00 p.m. or on Saturdays.

The guidance counselor calls a meeting for Bob, his IEP team, his parents, the career education specialist, and the district vocational education specialist. At the meeting it is decided that volunteer work in a setting such as a bank or insurance company is illegal according to FLSA guidelines. The approach will be to have the career education specialist find an after school placement for 6 to 10 hours each week on Monday through Friday. The career education specialist will work with the employer to get a Special Handicapped Worker Certificate to pay less than minimum wage if Bob's production level falls below the norm for a particular job. Some of the questions that were raised in this meeting included: (1) Can a student who is 16 years old or older receive unpaid training in a job site? (2) When should the Special Handicapped Work Certificate be used, and who is responsible for initiating this process? (3) Would including work after school as part of the IEP make this process easier, and would FLSA standards still apply?

Case Study 2 Response

Question 1. A student can receive unpaid training or training for less than minimum wage under certain conditions. Because Bob does not have a diagnosis of mental retardation, he would not be eligible for short term, unpaid training for up to 3 months. Bob could definitely work for wages within a school-based work experience program or during non-school hours. He also may be in a situation for which the six DOL trainee criteria apply, in which case unpaid training is permissible. The only real way to make sure is to check with a DOL official on this specific situation.

Question 2. The Special Handicapped Worker Certificate should be used when production levels for a particular job fall below the norm. The employer is generally responsible for obtaining a certificate of this type. However, a rehabilitation counselor or coordinating school official can submit a group application for all students and employers participating in a school work experience program. Regional DOL offices, Wage and Hour Division, have directions and forms. The important point here is that the certificate be in effect prior to employment at a subminimum wage. Bob would be eligible for a certificate if he cannot work at the established company rate of production.

Often, an employer is willing to pay minimum wage, particularly to young employees who are working part-time, even though it is not felt that the employees can initially work up to standard. Work rate is not nearly as significant an issue in community jobs as many educators and human service professionals fear. It is typically best to try initially to get minimum wage or better before getting into the special certification procedures.

Question 3. Since Bob is 16, he can work in a part-time paid job during the school day and after school. The only limitation on hours are those set by the particular local school system. It is always a good idea to include school-supervised work experience as part of the IEP. However, whether or not a work component is incorporated into the IEP has nothing to do with the applicability of the FLSA or the assertion of an employment relationship.

Case Study 3

Joan is a 19-year-old student with multiple handicapping conditions. She attends a public school program where she receives special education services 100% of the school day. In Joan's town, the school, in collaboration with the local sheltered workshop, has started a community job placement program for "transition-aged" students. Supported employment services are part of this program, and Joan has been chosen to participate. Joan's employment specialist helps her find a job for 20 hours a week at minimum wage in a deli. Are there any DOL regulations that would prohibit this job?

Case Study 3 Response

It appears that Joan is in good shape. She is old enough to work unlimited hours (up to 40 per week without overtime), and since she is making minimum wage, her employment situation complies with FLSA regulations.

Case Study 4

Andrea Simmons is a teacher of students with special needs. This year she has older elementary and younger middle school-aged students who range from 11 to 13 years. Andrea would like to begin providing career exploration and basic work experience for a few hours (less than 5) every week, but she's confused about the Child Labor Laws and DOL regulations. Her major questions are: (1) Can a child under 14 years of age ever perform paid work?; (2) Can her students work (paid or unpaid) during school hours in community job sites?; and (3) Can she supervise her students in some in-school vocational activities such as office, messenger, cafeteria work or janitorial maintenance.

Case Study 4 Response

Question 1. According to Child Labor Laws, children must be at least 14 to work in most situations and at least 16 to work in most nonhazardous jobs. See above for which jobs are appropriate for specific ages. Youths under 14 may work only if their jobs are exempt from the child labor standards or not covered by the FLSA. Exempt work includes: delivery of newspapers to consumers; performing in theatrical, motion picture, or broadcast productions; and work in a business owned by parents of the minors, except in manufacturing or hazardous occupations.

Question 2. Andrea's students can participate in unpaid work experience in community sites as long as the sites meet the six trainee criteria described above. The experience should be included in the IEP, and she should check with her regional DOL compliance specialist to make sure FLSA standards are met.

Question 3. Andrea's students can participate in in-school activities as long as this experience averages no more than an hour each day for each student and as long as no outside vendors are involved at the school work site. Students can be paid a stipend, provided exchanges such as free lunch, or receive training on a nonpaid basis.

Policy Implications of FLSA Regulations

The 1990 Amendments to the Education of the Handicapped Act now require that every student, aged 16 and older, have a statement of needed transition services as part of his or her IEP. This increased emphasis on preparing students to live and work in their communities as adults necessitates even more community-based instruction in potential work, social, and residential settings. In terms of employment training, this translates to some initial unpaid situations, particularly for younger students, such as situational assessments, vocational exploration experiences, and extended training in particular types of jobs most preferred by students (White & Biller, 1988). Although every student would not necessarily have to participate in each type of unpaid experience to obtain suitable employment, it should be assumed that many trials and hours of intensive community instruction would be required for each individual. It is unlikely that education personnel will be able or willing to contact their FLSA Section 14 Compliance Specialist prior to placement of every student in a community work setting. It is also very unlikely that school systems or employers

Table 2
Sample Content of an Agreement Between Federal Agencies Regarding School Work Programs for Students with Severe Handicaps

(1) Participants will be youth with severe physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.

(2) Participation will be for vocational exploration, assessment, or training in a community-based work setting under the general supervision of public school personnel.

(3) The goal(s) and objectives established for the exploration, assessment, or training components will be included in the student's Individualized Education Program (IEP) and will include appropriate, objective criteria and evaluation procedures to measure results.

(4) The period of time for each component will not exceed the following limitations during a school year.
  vocational explorations—5 hours per job experienced
  vocational assessment—60 hours per job experienced
  vocational training—120 hours per job experienced

(5) If at any point during the assessment or training components education becomes secondary to the performance of productive work, an employment relationship will begin with commensurate compensation.

(6) Participation does not result in the displacement of any current employee of the assessment or training site or impair the employment opportunities of others.

(7) A written assessment or evaluation of the student's progress toward achievement of the goals and objectives will be made at the end of the assessment and training periods. Such reports will be available for review by the United States Department of Labor, Wage and Hour Division.

(8) The student and parent or guardian must sign appropriate forms indicating that it is understood that wage payment during the exploration, assessment, and training periods is not required and that participation is entirely voluntary and by the choice of the student. Such signed forms will be available for review by representatives of the United States Department of Labor, Wage and Hour Division.

will have the resources to pay students while they are receiving community-based vocational training.

It appears that the current provisions of the FLSA may be counterproductive and serve to inhibit the implementation of community-based instruction prior to employment. Federal and state agencies responsible for education and those agencies responsible for compliance with employment standards must come to an understanding that ensures that appropriate training will occur without exploitation of the student. If the federal or state labor agencies are unable to develop cooperative agreements with educational agencies that allow for appropriately designed community-based instruction in real work sites, an analysis of existing policy should be initiated to determine what changes can most expediently occur.

At this point, it would be helpful for federal labor and education departments to form cooperative agreements or memoranda of understanding that clearly specify what would be permissible for students with disabilities in school work programs who are functioning in some "trainee" capacity in actual work sites. Some of the sample criteria that would be appropriate for such an agreement are included in Table 2. Of course, state agencies need to initiate similar agreements, particularly in states where their labor standards are more strict than federal regulations. Ultimately, it would make most sense for federal and state regulations regarding student work trainees to be identical.

Professionals, advocates, and families must formally encourage agencies to begin to forge agreements that allow community-based training for students who cannot move immediately from the classroom to a paid job. As well, lawmakers at the state and federal levels should be made aware of the obstacles that currently exist.

Conclusions and Recommendations

Understanding whether employment training does or does not require payment to the student can be a rather complicated task. However, completing a few simple procedures before placing a student and adhering to some guidelines can make the process much easier. A summary of the procedures and guidelines discussed in this article and most pertinent to students with severe handicaps in vocational programs is presented here.

1. Supervisors of vocational programs should always call, prior to implementation, the FLSA Section 14 Compliance Specialist in their regional United States Department of Labor, Wage and Hour Division office. Because FLSA regulation interpretation can vary across regional offices, it is essential that supervisors get final clearance on the appropriateness of a program directly from the persons who may monitor that employment or training situation.

2. It is important to include employment training in the IEP for a variety of reasons. However, doing this does not satisfy any FLSA or other Child Labor Law requirements. Most importantly, designating work in a community site as an IEP goal or objective does not entitle that placement to be unpaid training. It is also crucial to obtain approval from the state labor department since state regulations regarding student employment and training may be more stringent than federal law. In every case, the strictest law applies.

3. The age of a student definitely determines to some

extent what kinds of vocational training, paid or unpaid, can be done. Training in certain types of work is only permissible at particular ages, and the hours of work training allowable during school hours is also age-dependent. There are also federal and state sanctioned work experience programs that allow students of different ages to participate in paid employment as part of their school curriculum. Program supervisors should call their regional DOL offices, local department of education offices, and their state office of vocational education for information on these programs.

4. Generally, if a student is 16 years old or older, the easiest way to provide work training in community sites and meet FLSA standards is to pay the student. The DOL does not care whether the employer or the school is providing the wage as long as they have an agreement that specifies how payment will be made. Students with disabilities can work with special worker certificates that allow less than minimum wage payments.

5. The kind of diagnosis applied to a student with a disability also can affect their vocational training. The regulations for students with mental retardation are most clearcut. At least for these students, most regional DOL compliance specialists will allow 3 months of unpaid training in their first community placement. Of course, if the student learns all components of the job and can work independently before the 3 months are up, the student must be paid for performing that job. A student with mental retardation does not get a new 3-month training period for every new job experience.

6. According to federal regulations, students, regardless of age or disability diagnosis, can receive unpaid training in certain kinds of jobs if all six criteria specified in the FLSA are met. It is critical to get an interpretation as to whether the six criteria are met for each placement, regardless of whether it is for assessment, training, or paid employment. State labor laws can prohibit unpaid training regardless of compliance with the criteria specified in the FLSA.

7. Professional and advocacy organizations must work with state and federal education and labor department officials to create cooperative agreements that will allow unpaid training for students with severe handicaps in community job sites under certain conditions.

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Editor in Charge: John Nietupski

2. GUIDELINES FOR COMMUNITY BASED VOCATIONAL PROGRAMS - DOL/ED

Due to the Department of Labor discovering violations of the Fair Labor Standards Act with respect to schools' community based work experience programs for students with disabilities, the following guidelines were developed by the Department of Education and Department of Labor in September, 1992.

- **Job Exploration (cannot exceed 5 hours per job)**
- **Vocational Assessment (cannot exceed 90 hours per job)**
- **Vocational Training (cannot exceed 120 hours per job)**

The following notifications were sent to all school districts in Wisconsin in February, 1993 to alert schools to the requirements of the FLSA.

All the following conditions are required or all the protections of the FLSA apply.

1. Competitive employment at minimum wage is not immediately feasible & disability requires intensive on-going support in work setting.
2. Community based experiences are supervised by public school teachers.
3. IEPs define transition components of vocational experiences.
4. Parent & students fully informed of IEP & participate voluntarily.
5. Experiences do not entitle student to wages.
6. Experiences do not immediately benefit employers (no displacement of employees)
7. Students are directly & continuously supervised by school staff or employees.
8. Placement made per IEP, not to meet business needs.
9. Times per experience are specifically limited by IEP.
10. Students not entitled to employment at conclusion of IEP.
11. Experiences may not be those prohibited by statute.
12. Experiences based on a bona fide curriculum.
13. School credit is given.

WISCONSIN DPI
State of Wisconsin
Department of Public Instruction
125 South Webster Street, Madison, WI 53702 (608)266-3390 / (608)267-2427 TDD

Herbert J. Grover
State Superintendent

Mailing Address:
P. O. Box 7841
Madison, WI 53707-7841

February, 1993

Dear District Administrator:

This correspondence is intended to inform you of recent developments regarding the application of the Fair Labor Standards Act (FLSA) to work experience programs in the community for students with disabilities. Please be reminded that all students in work/study or co-op programs must be afforded the protections of the FLSA in concert with our own state child labor laws. Two states have recently been investigated by the United States Department of Labor (DOL) and found to be in violation of FLSA standards which resulted in fines to the local school districts and employers. (This also occurred several years ago to one district in Wisconsin.) As a result, the United States Departments of Labor and Education have issued the enclosed guidelines for districts to follow to ensure compliance with the FLSA.

Wisconsin's historical leadership in child labor laws and the promotion of school-to-work initiatives, including work-based learning methods, embraces recently enacted rules for the Individuals with Disabilities Education Act (IDEA) which require districts to provide "community experiences" and "needed activities...in the development of employment objectives" for all students with disabilities no later than age sixteen as a part of each student's "transition services."

You are strongly urged to peruse the attached material and assign a district committee of vocational and special educators to review your current policies and work-study practices to ensure they conform to the guidelines and laws relative to child labor. Questions and concerns regarding this topic should be addressed to Ms. Stephanie Petska, Vocational Special Needs Consultant, (608) 266-7987, Ms. Ann Kellogg, Transition Consultant, (608) 267-3748 or Mr. Preston Smeltzer, School-to-Work Transition Consultant, (608) 266-3701, in the department.

Sincerely,

Herbert J. Grover
State Superintendent

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Attachments
cc: Juanita Pawlisch, Ph.D., Assistant Superintendent
    Division for Handicapped Children and Pupil Services
    Monte Hottmann, Assistant Superintendent
    Division for Instructional Services

SEP 29 1992

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 21, 1992

OSEP MEMORANDUM

Contact
Name : William Halloran
Telephone: (202) 205-8112

OSEP 92- 20

TO : Chief State School Officers

FROM : Judy A. Schrag
Director
Office of Special Education Programs

SUBJECT: Guidelines for Implementing Community-based Educational Programs for Students with Disabilities

A number of State and local educational agencies have contacted the Office of Special Education Programs (OSEP) seeking guidance in implementing community-based education programs, that comply with the provisions of the Fair Labor Standards Act (FLSA).

The intent of the FLSA is to ensure that individuals are not exploited in our Nation's workplace. The intent of community-based training for students with disabilities is to provide structured educational activities which will lead to employment in their communities. Community-based training has been demonstrated to be an extremely effective strategy for improving employment outcomes. However, the expansion of community-based educational programs have often been slowed because of a need for further guidance pertaining to the implementation of the FLSA.

The U.S. Departments of Education and Labor have worked together to develop guidelines that detail the criteria to be met by educational agencies to ensure that the U.S. Department of Labor will not assert an employment relationship for purposes of the FLSA. A copy of these Guidelines is attached for your review and use. Also, attached is a copy of a "Dear Colleague" letter that gives background information and a Statement of Principle.

OSEP will be working with the recently funded Institute to Evaluate and Provide Technical Assistance to States Implementing Cooperative Projects to Improve Transition Services, to develop technical assistance materials in an effort to provide technical assistance to the field.

If you have questions regarding the attached information, please call Dr. William Halloran at (202) 205-8112.

Attachments

cc: State Special Education Directors
Special Interest Group Representatives
OSEP Technical Assistance and Dissemination Providers
All OSEP Staff

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dear Colleague:

The Departments of Education and Labor have collaborated to promote opportunities for educational placements in the community for students with disabilities while assuring that applicable labor standards protections are strictly observed.

Pursuant to the Individuals with Disabilities Education Act (IDEA), individualized education programs are developed to provide students with disabilities an opportunity to learn about work in realistic settings and thereby help such students in the transition from school to life in the community. Since the affirmation of students' rights to an appropriate free public education in 1975, many students with disabilities have benefitted from participation in vocational education programs in their public schools. Students with more severe disabilities, however, have experienced fewer benefits from participation in such programs. Alternative, community-based, and individualized education and training programs have emerged to meet their needs.

Our Departments share an interest in promoting educational experiences that can enhance success in school-to-work transition and the prospects that these students become effective, productive workforce participants and contributors to their community. At the same time, these students must be afforded the full protection of the nation's labor laws and not be subject to potential abuse as they start this transition through community-based educational experiences.

Existing Department of Labor guidelines which define "employees" for purposes of applying the requirements of the Fair Labor Standards Act (FLSA) do not specifically address community-based education programs for students with disabilities. To assist program administrators in developing programs or making placements that do not create questions about the establishment of an employment relationship between the students and participating businesses in the community, the Employment Standards Administration (Department of Labor), and the Offices of Vocational and Adult Education, and Special Education and Rehabilitative Services (Department of Education) have developed the following guidance.

STATEMENT OF PRINCIPLE

The U.S. Departments of Labor and Education are committed to the continued development and implementation of individual education programs, in accordance with the Individuals with Disabilities Education Act (IDEA), that will facilitate the transition of students with disabilities from school to employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or programs providing rehabilitation services to individuals with disabilities.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

BEST COPY AVAILABLE

GUIDELINES

Where ALL of the following criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

- o *Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.*

- o *Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.*

- o *Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).*

- o *Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.*

- o *The activities of the students at the community-based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.*

    1) *There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.*

    2) *The students are under continued and direct supervision by either representatives of the school or by employees of the business.*

    3) *Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.*

    4) *The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.*

- *While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:*

Vocational exploration	*5 hours per job experienced*
Vocational assessment	*90 hours per job experienced*
Vocational training	*120 hours per job experienced*

- *Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.*

It is important to understand that an employment relationship will exist unless all of the criteria described in this policy guidance are met. Should an employment relationship be determined to exist, participating businesses can be held responsible for full compliance with FLSA, including the child labor provisions.

Businesses and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

We hope that this guidance will help you achieve success in the development of individualized education programs.

ROBERT R. DAVILA
Assistant Secretary
Office of Special Education
and Rehabilitative Services
U.S. Department of Education

CARI M. DOMINGUEZ
Assistant Secretary
Employment Standards
Administration
U.S. Department of Labor

Betsy Brand
BETSY BRAND
Assistant Secretary
Office of Vocational and
Adult Education
U.S. Department of Education

3. APPLYING THE DEPARTMENTS OF LABOR AND EDUCATION GUIDELINES

OR

PROTECTING THE RIGHTS OF VOCATIONAL STUDENTS WITH DISABILITIES

COMBINED EXCERPTS FROM

"COMMUNITY-BASED VOCATIONAL EDUCATION: GUIDELINES FOR COMPLYING WITH THE FAIR LABOR STANDARDS ACT"

Katherine J. Inge Virginia Commonwealth University	M. Sherril Moon University of Maryland

"COMMUNITY-BASED VOCATIONAL INSTRUCTION AND THE LABOR LAWS: A 1993 UPDATE"

Katherine J. Inge Virginia Commonwealth University	Marlene Simon National Transition Network
William Halloran U.S. Department of Education	M. Sherril Moon University of Maryland

"LABOR, EDUCATION DEPARTMENTS TEAM FOR SMOOTH TRANSITION" (Counterpoint)

Patricia Bourexis The Study Group	Michael Norman The Study Group

Marlene Simon
National Transition Network

Transition is a key component of the Clinton Administration's Goals 2000: Educate America Act, and the federal Departments of Labor and Education have made that goal easier to reach by developing guidelines that erase conflicts between labor laws and community-based vocational education programs.

Congress underscored the value of transitional services by including transition requirements in the Individuals with Disabilities Education Act. More and more transition programs are delivering services to youth with disabilities in typical community work settings, rather than the traditional school-based programs. Under this act, every student, aged 16 and older (in some cases at age 14 or younger) must have a statement of needed transition services as part of his or her Individualized Education Program (I.E.P.). This emphasis on preparing students to live and work in their communities places an even greater demand on school systems to develop community-based training programs. In terms of employment, this means that students will need to participate in unpaid community work experiences such as vocational assessments, vocational exploration, and vocational training (Moon, Kiernan, & Halloran, 1990). Community-based vocational training has been defined as:

> ***"the type of [training] that uses the facilities, materials, persons, and/or tasks within a business to teach and assess students' work and related tasks. In this sense, the actual business environment is considered an extension of the classroom. Teachers, counselors, and support staff perform their instructional and evaluation roles within the context of these business environments."***
>
> (Pumpian, Shepard, & West, 1988)

Students with disabilities 14 years old or older engage in **nonpaid vocational exploration, assessment and training experiences** to identify their career interests, assess their employment skills and training needs, and develop the skills and attitudes necessary for paid employment.

After such instruction, students engage in **cooperative vocational education experiences for which they are paid.** Students often progress sequentially through all four components. However, some students participate only in one or two components before moving to cooperative vocational education, depending on their needs.

The **vocational exploration** component exposes students briefly to a variety of work settings to help them make decisions about future career directions or occupations. The exploration process involves investigating interests, values, beliefs, strengths and weaknesses in relation to the demands and other characteristics of work environments. The student, parents, exploration site employees and school personnel use this information to develop IEPs for the rest of the student's special education experience.

The **vocational assessment** component helps determine individual training objectives for a student with a disability. The student undertakes work assignments in various business settings under the direct supervision of school personnel and employees. Assessment data is systematically collected concerning the student's interests, aptitudes, special needs, learning styles work habits and behavior, personal and social skills, values and attitudes toward work, and work tolerance.

The student rotates among various work settings corresponding to the student's range of employment preferences as situational assessments are completed by school personnel and assessment site employees. As a result, students select work settings in which they can best pursue career or occupational areas matching their interests and aptitudes. Future training objectives are matched with these selections. These training objectives become a part of the student's subsequent IEP.

The **vocational training** component of CBVE places the student in various employment settings for work experiences. The student, parents, and school personnel develop a written training plan, which includes the competencies to be acquired, method(s) of instruction and procedures for evaluating the training experience. Training is closely supervised by a representative of the school or a designated employee/supervisor. The purpose of this component is to enable students to develop the competencies and behavior needed to secure paid employment.

Cooperative vocational education consists of an arrangement between the school and an employer in which each contributes to the student's education and employability. The student is paid for work performed in the employment setting. The student may receive payment from the employer, from the school's cooperative vocational program, from another employment program operating in the community such as those supported by the Job Training Partnership Act, or a combination of these.

Schools and businesses should consult their U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division Regional Offices for addition guidance.

Community-based vocational education has been demonstrated to be an extremely effective strategy for improving employment outcomes (D'Amico, 1991). However, a number of programs have been forced to reduce their services after being cited for failure to pay commensurate wages to students in a variety of community situations (J. Early, personal communication, February 10, 1992; L. Love, personal communication, June 10, 1993; T. Moorehead, personal communication, September 10, 1990).

Community-based education - the systematic teaching of *life skills* in the actual environments in which students will need to apply them - has become recognized as a primary methodology for preparing and assisting people with severe disabilities to make the transition from school to community life (Halloran, 1993; Rusch, DeStephano, Chadsey-Rusch, Phelps, & Szymanski, 1992; Sailor, Anderson, Halvorsen, Doering, Filler, & Goetz, 1989; Simon, Karasoff, & Smith, 1992; Wehman, 1992). These environments include the world of work, where curricular content is based on ecological inventories to determine the skills needed for employment. From the need to develop systematic instructional strategies to prepare people with severe disabilities for employment and independent living, a vocational education model evolved that utilized community worksites for situational assessment and training.

The importance in promoting these experiences is underscored by the findings of the National Longitudinal Transition Study of Special Education Students, which points to programs and services that hold promise for improving outcomes for students with disabilities (Wagner & Shaver, 1989). The study found that enrollment in occupationally oriented vocational programs was significantly related to a lower likelihood of dropping out of school. Additionally, youth who took vocational education during school or had work experience as part of their educational program were substantially more likely to be employed after high school This study confirms our belief that these experiences can increase the potential for students with disabilities to become effective, productive and competitive wage earners and contributors to their communities.

Components of the community-based vocational education model include: *vocational exploration, vocational assessment, vocational training*, and *cooperative vocational education* (Halloran & Johnson, 1992). Table 1 provides a description of each of the model's components. Over the past 10 years, these components have been acknowledged as necessary prerequisites to effective instruction in the community. However, over the same period, research and demonstration indicates that it may not be necessary for a student with severe disabilities to use all components of the model. In fact, a combination of these components and the time periods in which they are applied are often variable.

Table 1

Components of the Community-Based Vocational Education Model

Vocational Exploration	The vocational exploration component allows students to obtain brief exposure to a variety of work alternatives. By watching work being performed, talking with workers on the job, and actually trying the job under the direct supervision of school personnel, students are provided an introduction to occupations. Exploration enables students to make choices regarding occupational areas they may wish to pursue.
Vocational Assessment	The vocational assessment component focuses upon determining individual training objectives in the context of a work environment in which the client might be employed. Specific recommendations result in the development of the Individualized Education Program (IEP). This situational assessment is always under the close supervision of school personnel or an assessment site employee.
Vocational Training	Vocational training requires placing the student on the job to obtain work experience, which cannot be simulated in a school setting. A detailed, written training plan usually includes the competencies to be acquired, method(s) of instruction to be used, and procedures for the evaluation of the training. Training is closely supervised by a representative of the school or by a designated co-worker/supervisor. The purpose of this component is to enable students to develop work behavior and competencies needed to secure paid employment.
Cooperative Vocational Education Agreement	The cooperative vocational education agreement is an arrangement between the school and the employer whereby each contributes to the student's education and employability in designated ways. The student must be paid for any work from which the employer derives an immediate advantage. The written cooperative agreement must describe the role of the school and the employer and must include a clear stipulation of student wages and benefits. Both the agreement and the student must remain under the general supervision of school personnel. This component may also include follow-along services to ensure student adjustment to the job with periodic follow-up after the student completes school.

Note. Adapted from "Education - Industry Collaboration: Guidelines for Complying with the Fair Labor Standards Act" by W. Halloran and W. Johnson, 1992. American Rehabilitation, 18(4), 21-23.

Many teachers when designing this type of training for their students with disabilities are unaware that there are specific Department of Labor (DOL) regulations that must be met. Still others believe that nonpaid work experiences are acceptable as long as vocational objectives appear in the students' I.E.P.s. This is not the case, and school systems must adhere to the rules and guidelines of the Fair Labor Standards Act (FLSA) administered through the United States Department of Labor (Halloran & Johnson, 1992; Moon & Inge, 1993).

Currently, there are a few resources available to assist teachers in interpreting the relationship between labor regulations and community-based instruction. Moon, Kiernan, and Halloran (1990) wrote at length on the labor laws as a result of the FLSA amendments in 1989. For the first time, teachers were provided a comprehensive explanation of FLSA regulations with case study examples. More recently, Halloran and Johnson (1992) discussed the guidelines that were issued prior to the beginning of the 1992-93 school year by the U.S. Department of Education (ED) and DOL. These guidelines must be incorporated in community-based training programs for students with disabilities. The intent of this article is to: 1.) answer common questions that teachers may have concerning the regulations, and 2.) provide case study examples that may assist teachers in interpreting this information.

Guidelines

Understanding a number of key concepts and issues is critical to successfully implementing the guidelines that were released by the Departments of Education and Labor. First, the primary intent of the FLSA is to ensure that individuals are not exploited in the workplace (Halloran & Johnson, 1992). One way to make certain that students with disabilities are not exploited in community-based vocational programs is to ascertain that a "nonemployment relationship" exists between the students and the employer. In other words. the relationship exists for training purposes only. **and activities completed bv students do not result in an immediate advantage to the business.**

A number of factors should be considered when determining whether a business is benefiting from having students in community-based instruction. First. the student(s) and teacher (or other school representative) can not complete an employee's job duties while he/she is reassigned to other work tasks that are not usually his/her responsibility. The employee must continue to do his/her work while the student is trained on those tasks as well. This has been referred to as "shadowing" the regular employee (Moon et al., 1990). In addition. students can not perform services that. although not ordinarily performed by employees. clearly benefit the business.

Before placing a student in a community business for instruction. the teacher and student's I.E.P. team must identify the goals and objectives that are to be trained and include them in the student's I.E.P.. In addition. the teacher must make sure that the employer. student. and parents understand that the placement is intended for training purposes; is a nonpaid experience; and the student is not guaranteed a job after the training is complete. It is important to develop an agreement between all parties concerned that specifically states the intent of community-based vocational instruction including the DOL and ED guidelines.

Teachers need to realize that **all of the criteria** spelled out in the guidelines released by the Departments of Education and Labor must be met in order to assert that an employment relationship does not exist. Fines can result, and businesses can be held responsible for back wages if violations are identified.

Frequently Asked Questions on the Fair Labor Standards Act

The following information may be very helpful in interpreting the above guidelines. These questions and answers were developed by Marlene Simon, National Transition Network, and Dr. William Halloran, U.S. Department of Education. The topics discussed include: 1.) requirements for participation, 2.) documentation issues, 3.) program supervision, 4.) the educational versus the employment relationship, and 5.) instructional programming.

Requirements for Participation

1. **Which students may participate in community-based vocational instruction under these guidelines for non-employment relationships?**

   Students who meet state guidelines for special education may participate in community-based vocational instruction if it is determined appropriate for them.

2. **The criteria in the guidelines indicate that community-based vocational education is for individuals for whom employment *is not immediately obtainable?* What does this mean?**

   The "not immediately obtainable" language was placed in the criteria to ensure that students would not be placed in the exploration, assessment, or training components of community-based vocational education if they were capable of obtaining employment at or above the minimum wage level. Community-based vocational programs are organized educational activities intended to prepare students for paid employment while they are in school.

3. How is it determined which students might need CBVE?

The determination should be based on comprehensive vocational evaluation, including functional vocational evaluation, taking into consideration the individual student's preferences and interests; all of which are discussed at and determined by the IEP committee. CBVE would be considered a major change in placement for most students and would require a change in the IEP. The education agency must invite the student to any meetings considering transition services or participation in CBVE.

4. Does the term "Physical and mental disabilities" mean that students with learning disabilities are excluded?

No. Learning disabilities can have its origin in physical or mental disabilities. However, participation in CBVE should not be determined by disability group but rather by individual needs and preferences documented at the IEP meeting.

5. What vocational options should be available to students whose needs wouldn't be considered severe?

CBVE is not intended to replace vocational education, work study, Youth Apprenticeships, or other vocational training and employment programs. It is intended to be an option made available to students to expand the capacity of education agencies to assist each student achieve employment objectives.

6. Community-based instruction is intended for students who will need *intensive on-going support* to perform in a work setting. Does this mean that only students with more severe disabilities can be placed in community-based instruction?

Community-based vocational education is intended for those students with more severe disabilities. However, the level of severity must be based on skills and behaviors necessary to function in a work setting. Examples of on-going support services include job redesign, environmental adaptations, personal assistance services, transportation, and social skills training (Rehabilitation Act Amendments of 1992, Senate Report 102-357, p. 24).

Documentation Issues

1. What type of documentation is needed?

It is important in community-based vocational instruction programs to document that all participants - the student, the parent or guardian, the employer, and instructional staff - understand that:

- If at any point the community-based vocational activity is no longer a learning experience, it can not be considered a nonemployment relationship;
- The community-based vocational program must meet all the requirements outlined in the guidelines for nonemployment relationships; and
- The student is not entitled to employment at the worksite where they are receiving instruction and training.

Three types of documentation must be employed to meet the requirements of these guidelines:

1.) an I.E.P. reflecting vocational instruction and training goals and objectives relevant to the community-based vocational experience;
2.) **a letter of agreement** outlining the DOL/ED requirements and signed by all participants; and
3.) **ongoing case notes** (i.e. attendance records, progress reports, task analysis data, etc.).

2. Does the IEP eliminate the need to adhere to other laws governing child labor?

Technically, child labor laws do not apply where there is not an employment relationship. However, it is highly recommended that educators adhere to child labor laws with regard to hazardous working conditions. Instruction and training in occupations which involve the use of machinery such as deli slicing machines, trash compactors, and bread dough kneading machines have been known to cause serious injury. Child labor laws provide guidance which can assist education personnel in determining whether a job is hazardous.

3. Is special or extra liability coverage for students required?

CBVE is considered part of the student's individualized education program. In nonemployment relationships, the work site is perceived as an extension of the school. In other words, the students is pursuing instructional objectives in a work setting. Since these students are not employees, they are not eligible for the usual worker's compensation insurance coverage provided to employees. If the student is a paid employee of the business, then the employer is responsible for providing him/her the same liability coverage offered to other employees. If the student's participation in workplace activity can be considered instructional and part of a nonemployment relationship, then the school may be responsible for liability coverage. Generally, the same insurance and liability policies which apply to other off-site school experiences (i.E., athletic events, field trips, etc) should apply. Each school district must work out its own policies regarding liability.

4. Can we share information from the CBVE with vocational rehabilitation agencies?

Yes. Information from the CBVE program can be shared with other agencies as long as confidentiality procedures are followed. If other agencies are invited to and attend the IEP meeting, this information will routinely be shared at the meeting.

5. Is it necessary that the vocational goals and objectives in the I.E.P. specify exact site placements?

No, it is possible for the I.E.P. to identify only general goals and objectives to be pursued (i.e., job clusters to explore or conduct assessments in; assessments of general work behavior skills; training in a specific occupation, etc.). The I.E.P. should, however, expressly limit the amount of time students will spend at any one site or in any one distinguishable job classification. Additional written ageeements with parents, students, and employers should reflect the exact location and document the specific nature of the education and training involved.

6. Do reports have to be made to the U.S. Department of Labor and/or the U.S. Department of Education?

No, it is not necessary to make reports to the U.S. Department of Labor or the U.S. Department of Education. However, adequate records documenting your programs' compliance with the criteria for non-employment relationships must be maintained. In the event of a Department of Labor investigation of your program this information must be made available to the DOL. A school system should contact their state and federal Departments of Labor when initiating community-based training programs and identify a contact person. It may be useful to send general information about the intended training program and obtain feedback concerning compliance with regulations. The appendix of this paper contains a letter and summary statement that was mailed to the U.S. Dept. of Labor concerning the Vocational Options Project.

7. Do the guidelines from the federal Department of Labor supersede individual State Departments of Labor regulations?

No, it is important that community-based vocational instruction programs comply with both U.S. Department of Labor regulations and State Department of Labor regulations. Where the two do not agree, the regulations with the most stringent requirements for protecting individuals in work settings must apply.

Program Supervision

1. What is meant by the term *under the general supervision* of public school personnel?

Under the general supervision means that the public school or education agency has primary responsibility for the community-based education program.

Under IDEA. failure to deliver free appropriate educational services constitutes a violation of the rights of students with disabilities. This phrase places responsibility for ensuring that community-based vocational programs squarely on the shoulders of public school personnel. While different agencies or groups may deliver these educational services. public school personnel must act as the central agency overseeing the program.

2. What are the implications of the *continued and direct supervision* requirement for educators and employers?

Student participation in community-based vocational training is considered as a valid part of a student's instructional program. As such. he or she is expected to be closely supervised by school staff or employees of the business.

Direct supervision can include:

- one-to-one instruction.
- small group instruction,
- supervision in close proximity. and
- supervision in frequent, regular intervals.

Supervision in frequent, regular intervals is permitted when the goal is to assess ability to work independently or to demonstrate mastery of the vocational skill.

3. Is it necessary for someone to monitor the student at all times?

Students in community-based training programs are to be monitored at all times. However, exactly how closely a student needs to be monitored in a community-based work setting must be determined on an individual basis. The various components of training could require a variety of monitoring strategies depending on the goals and objectives outlined in the I.E.P. For example, vocational exploration and vocational assessment may require closer monitoring than the training component when the student may be working towards more independence in job performance.

4. What educational qualifications and/or certificate must education staff have in order to provide supervision in CBVE programs as the education agency's representative?

It is the responsibility of state and local education agencies to determine the qualifications necessary for education staff providing supervision in CBVE programs. (In Wisconsin, every school district is required to make available "school supervised work experiences" for all students. These experiences must be supervised by licensed teachers.)

The Educational Relationship vs. The Employment Relationship

1. What is an employment relationship?

In an **employment relationship**, the student is actually providing services that are of immediate benefit to the employer. The student may be completing assignments normally completed by regular employees. As a result of their activities, vacant paid positions in the business may remain unfilled and regular employees may be displaced or relieved of their normally assigned duties. In an employment relationship, the participating business and school are responsible for compliance with the FLSA's minimum wage and overtime pay provisions.

2. What is an educational relationship?

In an **educational relationship** the student engages in work activities as part of an organized educational activity designed to benefit the student. The guidelines on implementing community-based vocational training, consistent with the FLSA, outlines the criteria for making the distinction between an employment relationship and a valid educational experience.

3. What is the distinction between benefit to the student vs. benefit to the employer?

Benefit to the employer occurs when the business recognizes ***an immediate advantage*** by having a student work on the premises. ***An immediate advantage*** can be defined in terms of increased profitability or production for the business. The courts and experts in the field suggest that for community-based vocational instruction to represent an educationally valid experience the following should be implemented (Pumpian, Lewis, & Engel, 1986):

- Students receive adequate orientation and instruction before performing new tasks.
- The student's goals and objectives to be met in the community-based instruction program are clearly defined.
- Activities in the community-based setting relate directly to the student goals and objectives.
- The student's activities in the program are closely monitored.
- Records of the student's progress are maintained.
- The necessary support and time for students to develop proficiency at new tasks is provided.

4. **What is the educator's role in assuring that regular employees will not be displaced by the student trainee in the workplace?**

The community experience must be primarily for the benefit of the student. Also. regular employees must not be displaced or relieved of assigned duties and vacant positions should not go unfilled. Two strategies are available to educators for ensuring that this criteria is met. First. the educator can confirm that all parties - the employer. the student. and the parents - understand that students in the community-based vocational training program must not displace regular employees. An agreement documenting this understanding should be signed by all involved. Secondly, those who provide direct supervision to the student at the worksite may observe when employee displacement and other violations are occurring and take steps to correct the situation.

5. **Can students accept an offer of paid employment at a worksite where they were placed for community-based instruction?**

Yes. students may accept an offer of paid employment at a work site where they received instruction and training. The student would then become an employee of the business and an employment relationship would ensue. This means that the employer is responsible for full compliance with the FLSA. including minimum wage and overtime pay provisions.

6. **Could the student be paid less than minimum wage?**

Yes. employment below the minimum wage rate is permitted in instances when a worker's disabilities impair their ability to perform the job. This special minimum wage rate is based on the productivity of the worker with disabilities as compared to the productivity of a worker without disabilities. Employers must apply to the U.S. Department of Labor for authority to employ workers with disabilities at these special minimum wage rates.

Instructional Programming

1. **Is it necessary that the program follow sequential order (i.e. exploration, assessment, training)?**

No, it is not necessary that the community-based vocational training program follow a prescribed order. Given the nature of the student's needs, any of the three components may be deleted. It is only necessary that the program follow logical, generally agreed upon instructional best practices. For example, assessment and exploration usually would not follow training in one job classification.

2. **Does the I.E.P. team have to reconvene for multiple vocational explorations, assessments, and training?**

No, it is not generally necessary to reconvene the I.E.P. team for multiple vocational explorations, assessments, and training. The vocational I.E.P. objectives and goals can be written broadly enough to incorporate these experiences.

3. **What is meant by the phrases *clearly distinguishable occupation* and *clearly distinguishable job classification*?**

The word *occupation* refers to a specific profession or vocation generally engaged in as a source of livelihood. Occupation and job classification are meant to be synonymous. Examples of occupations are shipping and receiving clerk, custodian, and painter. Often occupations are confused with specific work activities or work stations which may be integral components of specific occupations. For example, work as a building custodian involves sweeping, emptying trash, and mopping. Each of these work activities must be considered as part of the clearly distinguishable occupation of custodian. A student who has received all allowable hours of non-paid instruction and training in the job of school custodian should not be moved to a new site for a separate experience as a non-paid office building custodian.

4. **Given these guidelines, could an employer move students around to different work stations or occupational areas not specified in their written agreement?**

No, as stated earlier, goals and objectives for the student have been outlined in the I.E.P. and written agreements between the student, parent, employer, and school personnel detail specific activities for the community vocational experience. Thus, the community-based vocational experience can be considered a valid educational experience under the supervision of school personnel. Employers must feel free to remove students from any work activity if they determine that removal is necessary for safety or other reasons. However, under no circumstances should the student be placed in a work station or occupational area not specifically outlined in the written agreement.

5. **Do these guidelines refer to programs under special education and/or vocational education?**

It does not matter whether the community-based vocational program is offered through special education or vocational education. However, students participating in training under these guidelines for nonemployment relationships **must be youth with disabilities as defined by the Individuals with Disabilities Education Act.**

6. **Do these guidelines apply to work during the summer?**

Yes, these guidelines may apply to summer programs as long as they are under the general supervision of school personnel. Many students have individualized instructional programs that call for an extended year educational program. Other students may simply elect to enroll in summer school.

7. Would vocational assessment be required to determine a student's interests and preferences?

A formal vocational assessment may not be required to ascertain a student's preferences and interests if other alternatives are appropriate. However, as part of the overall decision-making process, needs for support services or assistive technology should also be identified. These needs may be determined through ongoing assessment procedures inherent in the various components of CBVE and IEP development.

8. Is it necessary that the vocational goals and objectives in the IEP specify exact site placements?

It is possible for the IEP to identify only general goals and objectives to be pursued. The IEP should, however, expressly limit the amount of time students will spend at any one site or in any one distinguishable job classification. Additional written agreements with parents, students, and employers should reflect the exact location and document the specific nature of the education and training involved.

9. How will students receive academic credits for CBVE?

How students receive academic credit for work done in CBVE programs is left to the discretion of state and local education agencies. (In Wisconsin, since school supervised work experiences for all students are required under the Education for Employment standard, credit must be awarded toward graduation.) The IEP committee determines the "criteria for evaluating" accomplishment of the vocational objectives and method of evaluating. The IEP committee should decide the number of credits to be awarded and the criteria for awarding them. Frequently, the policy for academic credit in CBVE programs will be consistent with the one used for vocational education programs available to the general population.

Interpreting The Guidelines: Case Study Examples

Understanding the labor laws can be a complicated task. School systems must assume the responsibility for adhering to the guidelines and developing a community-based training policy. Initial work with the state and federal labor departments can ensure appropriate training experiences for all students. The following case studies represent typical scenarios that have been described by school system personnel when asking questions concerning the FLSA and community-based vocational training. Understanding these scenarios may prove helpful when designing community-based vocational training programs that meet the DOL and ED guidelines.

Case Study #1

Joan is 18 years old with severe mental retardation and mild cerebral palsy. At the beginning of the school year, Joan's IEP team consisting of the teacher, her parents, a vocational rehabilitation counselor, a physical therapist, and Joan decide that she should participate in a minimum of 3 vocational training placements during the school year. The team agrees to placements at the mall's food court, a hotel laundry, and a beauty shop. Job duties at the mall will include busing tables and cleaning trays. Work tasks at the hotel laundry and beauty shop will be similar, since the duties on these job sites are washing and folding towels. However, the team feels that it would be important to determine if Joan prefers the beauty shop environment to the hotel laundry. All tasks are specified in Joan's I.E.P.; data will be collected.

and a summary of each training experience will be written up for her school records. Joan, her teacher, the principal, her parents, and each employer will sign an agreement prior to training stating that these are nonpaid work experiences to benefit Joan and not the companies. A teacher or aide will be with Joan at all times to provide supervision, instruction, and data collection.

Response to Case Study #1

Joan's IEP team is certainly on the right track! One potential problem area could be that the community-based training experiences at the laundry and beauty shop are the same job type. (e.g. Joan will be washing and folding towels.) Some teachers may interpret the guidelines to mean that Joan could have 120 hours of training at the laundry and 120 hours at the beauty shop during the school year. This is not the case unless the tasks performed at the laundry and hotel are of clearly different job classifications. In Joan's example, the teacher should monitor the training experiences to ensure that Joan receives only **120 hours** of vocational training per job type experienced in any one school year. The agreement with the various employers also should specify that Joan and her teacher are not displacing company employees, filling vacant positions, or otherwise benefiting the business during community-based instruction. For instance, they would need to "shadow" or work alongside the regular employees while completing the work tasks at all sites.

Case Study #2:

Sally is 16 years old and is participating in her school's community-based vocational training program. She has been training for the past 2 1/2 months at a fast food restaurant washing trays. Sally became very proficient at the task within one month, and her teacher brought in another student, Mary, to train on cleaning tables and sweeping the floors of the restaurant. The regular worker who washes trays and cleans the tables has been re-assigned to clean the bathrooms and parking lot while the teacher is on the site with her two students. The teacher continues to monitor Sally's progress and collect data for on-task behavior and meeting production standards while training the new student. Since Sally has not completed **120 hours** of unpaid training in this job classification, the teacher is not worried about moving her to a new training site.

Response to Case Study #2

As established now, this training site **does not** meet the guidelines of the DOL. Specifically, Sally, Mary, and the teacher are displacing the regular employee who can now move on to cleaning the parking lot and restrooms. This benefits the employer, since the students and teacher are completing the regular work tasks. In addition, Sally is completing the tray washing job at the normal work rate and would qualify as an employee. Since she is 16 years old, Sally could be hired by the employer at the regular wage if her IEP team decided that this is an appropriate job for her. Mary could continue in her nonpaid experience as long as a training agreement were developed that included all of the DOL requirements for a nonemployment relationship.

It is possible to change this site so that both Sally and Mary can continue training here. First, specific objectives should be included in both student's I.E.P.s that state what they are to learn on this site. Next, a training agreement should be developed that states that the students and teacher will not displace the regular worker. In fact, the students must "shadow" the regular employee and perform in a manner that does not benefit, and may, in fact, impede, the employer. The agreement should specify that the experience is for training only and data should be collected by the teacher to demonstrate that this is a nonemployment relationship. In this example, Sally needed to begin training and "shadowing" the regular employee on another job task as soon as she learned the tray washing job. The **120** hour guideline is intended to represent the maximum amount of time a student can **train** on one job classification per year. Finally, the training agreement should specify that the students do not qualify for a job after they have completed training.

Case Study #3

Mrs. Jones is the teacher for a class of students with severe disabilities ages 16-18. She is attempting to find all of her students "volunteer" positions within the community for at least 2 hours per week to help them gain work experiences. Mrs. Jones' cousin, Ms. Andrews, runs a catering business and suggests that she would be willing to have one student work for her every Monday afternoon from 3:30 p.m. to 5:30 p.m.. Tasks would include washing dishes, packaging foods in containers, and simple food preparation. Ms. Andrews also would be willing to have two other students fold and label her advertising brochures once a month for approximately 4 hours of work. Both of these jobs would be considered "volunteer positions". Mrs. Jones knows that two of her students can complete the mailing task without supervision, and another student has training in simple food preparation. Mrs. Jones doesn't plan on listing these activities as part of the students I.E.P.s, since it occurs during non-school hours, and she will not need to provide any training or supervision.

Response to Case Study #3

Students who have disabilities can volunteer their time in the same way as their peers without disabilities (Moon et al., 1990). For instance, Mrs. Jones might try to identify volunteer positions with the United Way. church. SPCA. or other local charity organization for her students. However. in this situation. it is unlikely that 16-18 year old students would volunteer for 2-4 hours of nonpaid work. since most food service positions are not voluntary. All students must be paid at least minimum wage if this is not a training experience.

Another option might be to determine if the students are able to meet the production levels for these particular jobs. If not. the teacher could consider assisting the employer (her cousin) to file for a **Special Worker Certificate**. This certificate can be used when production levels for a particular job fall below the norm. The employer is generally responsible for obtaining a certificate of this type; however a rehabilitation counselor or school representative can submit a group application for all students and employers participating in a school work experience program. It appears that the mailing task could be paid at subminimum wage if two students are needed to complete the task in the time period usually required by one employee. The student who will work every Monday may also qualify for subminimum wage if he/she cannot work at the established company rate of production. The important thing to note is that the certificate must be in effect prior to employment. Regional DOL offices. Wage and Hour Division. have the directions and forms.

Case Study #4

Mr. Bryant is the teacher for a classroom of students with severe disabilities age 16-18. The school is located in a small community with few opportunities for community-based vocational instruction. There is one restaurant/deli in town. and Mr. Bryant has developed a training agreement with the owner. The agreement states that he will take all 5 of his students to the restaurant 2 days a week. for 4 hours of nonpaid work experience (not to exceed **120** hours in a school year). The owner agrees to set up one work station in the middle of the kitchen for all 5 students where they will complete jobs such as wrapping sandwiches in foil, rolling silverware in napkins, and filling individual potato salad and slaw containers. During the time that the students are on site, the 3 employees hired by the business will continue work on their regularly assigned job duties which include the tasks that will be completed by the students. The fact that the students are not at the deli to benefit the employer has been carefully discussed, and the regular employees will not be assigned other job duties.

Mr. Bryant also has explained this training experience at each student's I.E.P. meeting. All parents have signed an agreement with the employer stating that this is a nonpaid work experience and that the students are not entitled to a job at the end of training. Each student has a set objective that he/she will be trained on, and Mr. Bryant plans to take data one day a week for each student. He will be monitoring the data carefully to ensure that the students maintain a nonemployment relationship. Mr. Bryant is very relieved that he has been able to set up this site, because he doesn't have to worry about community-based instruction for the rest of the school year.

Response to Case Study #4

Technically speaking, Mr. Bryant has met the requirements for a nonpaid community-based training experience! Clearly, having 5 students with a trainer in the middle of a kitchen during the lunch hour could be considered impeding the employer. Mr. Bryant also has addressed all of the DOL guidelines for a nonemployment relationship.

However, this situation does not reflect "best practices" for designing a community-based vocational training experience. For instance, all 5 students will be on site, at the same time, in the same work area. It would be more beneficial to place no more than 2-3 student(s) on this job during any one time period. since there are only 3 regular employees at the site. Students could be assigned a regular employee to shadow. one-to-one. while a school representative is responsible for the direct supervision. training. and data collection. Direct supervision could entail one-to-one instruction. small group instruction. supervision in close proximity. and supervision in frequent. regular intervals (Simon & Halloran. unpublished paper). Supervision in frequent, regular intervals would be appropriate for one of Mr. Bryant's students when the goal is to assess the ability for him/her to work independently or demonstrate mastery of a skill. For instance, Mr. Bryant may monitor a student who has been assigned to a regular employee every 30 minutes to determine if he/she is able to work without the teacher's constant supervision. This goal of working independently should be specified in the student's I.E.P..

Mr. Bryant also needs to ask himself if this job is reflective of the type(s) of employment that is available to his students post graduation. If this is the sole restaurant in town. and the owner only hires 3 employees. it may be pointless to train all of his students to complete food service tasks. In addition. Mr. Bryant has failed to provide any variety or job sampling for his students. Since only one job is offered during the year. a student does not have the opportunity to compare various positions to establish a work resume/history or determine a job preference. Mr. Bryant needs to complete a community analysis to determine what other jobs are available and establish training agreements with additional businesses.

Case Study #5

John is 13 years old and is participating in a school-based vocational program. two days a week for 1 hour per day. His teacher provides training and supervision to him and two other classmates for picking up trash on the school grounds. Each student has objectives on his/her I.E.P. for this activity and all parents are supportive of the training. Once a week on Wednesday, the school's custodian (who is employed by the school district) works alongside the students and assists the teacher in providing feedback and support. The custodian has even volunteered to supervise the students on his regular trash pick up day in order to "free up" the teacher to work with other students.

Response to Case Study #5

It may be particularly beneficial to provide initial work experiences for younger students within the school building or on the school grounds. The DOL has established that work experiences can occur directly for the school if the time period is less than an hour per day on the average. John and his classmates can participate in this school based vocational activity, since they are only working for 2 hours per week. In addition, it represents an excellent opportunity for the school custodian to provide natural supports to these students for performing job tasks.

It is important to note that the custodian is a school employee. If this job had been performed by an outside vendor (e.g. a private lawn maintenance crew), the teacher must be certain to establish a nonemployment relationship according to the DOL guidelines. Teachers are cautioned to make sure that targeted jobs within the school system are being completed by school employees and not outside vendors when selecting vocational training activities. In other words, students, regardless of age, can participate in nonpaid work experiences within the school system if an outside vendor is not involved. The teachers responsible for coordinating this type of experience, however, should provide some type of training stipend or incentive such as a free lunch in order to instill the value of work (Moon et al., 1990).

(Department of Labor, 1989; Fair Labor Standards Act: PL 101-583 Sec. 14).

Summary

The U.S. Departments of Education and Labor believe that the articulation of the guidelines will enhance the relationships being developed between education agencies and private industry. The two departments share an interest in promoting educational experiences that can enhance success in school-to-work transition. The guidelines developed by the two federal agencies are very consistent with recommendations made by Moon, Kiernan, and Halloran (1990).

The guidance presented in this paper is intended to ensure that students will be afforded the protection of the Nation's employment laws as they take part in community-based vocational education experiences. It is important that vocational educators become more knowledgeable about these laws. This includes becoming familiar with the sub-minimum wage (special minimum wage) and child labor provisions of the FLSA. More information, such as the Handy Reference Guide to the Fair Labor Standards Act (United States Department of Labor, 1987), may be obtained from a regional compliance specialist or by writing to the U.S. Department of Labor, Employment Standards Administration, Washington, DC 20210. With community-based training for students with special needs becoming more commonplace, compliance monitoring by the Department of Labor will likely increase (Martin & Husch, 1987). If a site is in violation, the employer will be liable for back wages. Child labor violations also bring civil monetary penalties. Relations between schools and employment sites may be permanently damaged if relevant laws are not followed.

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B. Individuals With Disabilities Education Act (IDEA)

The **Individuals with Disabilities Education Act (IDEA)**, formerly known as the Education of the Handicapped Act (EHA), took effect October 30, 1990. IDEA's most significant amendments are transition programming mandates explicitly requiring a process which includes multi-disciplinary and multi-agency responsibilities and coordinated instruction, **community experiences, employment objectives** and other post-school adult living objectives. Simply stated, this law requires a sharing of transition programming responsibilities among vocational education, employment specialists, post-secondary education, social service and mental health specialists, and special education. It is clearly not special education's sole responsibility.

IDEA defines transition services as:

> a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, **vocational training, integrated employment (including supported employment)**, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, **community experiences, the development of employment and other post-school adult living objectives**, and, when appropriate, acquisition of daily living skills and **functional vocational evaluation**. (20 U.S.C. 1401(a)(19))

The transition services the IEP committee designs **MUST** include "needed activities in the areas of:

- instruction,
- **community experiences,**
- the **development of employment objectives,**
- the development of other post-school adult living objectives,
- if appropriate, acquisition of daily living skills,
- if appropriate, **functional vocational evaluation,**"

or document why not. (34 C.F.R. 300.18 (b)(2) and 300.346 (b)

Suggestions to implement these requirements:

"The Secretary (of Education) interprets these provisions to require that, at a minimum, the IEP team for each student must address each of the areas listed...and determine what services are needed by the student in each area. If the IEP team determines that no services within a particular area are needed by the student, the IEP must include a statement to this effect, and the basis upon which that determination was made."

1. **Instruction** - Suggested Curricular Areas

    a. Financial Management
    b. Career and Vocational Education
    c. College Preparatory
    d. Daily Living Skills (When Appropriate)
    e. Recreation, Leisure Skills
    f. Transportation, Mobility
    g. Self-advocacy
    h. Job Finding
    i. Personal/Family Relationships

2. **Community Experiences** - Suggested Activities

    a. Work-study
    b. Youth Apprenticeships
    c. Job Shadowing
    d. Work Site Visitations and Presentations
    e. Public Transportation Experiences
    f. Shopping Experiences
    g. Recreation Experiences, Clubs
    h. College and Technical School Experiences
    i. Apartment/House Management Experiences (Maintenance, Financial, Domestic, Personal Skills)
    j. Adult Service Agency Experiences
    k. Volunteer Experiences - Youth Service
    l. Child Care
    m. Student Organizations, VSOs
    n. Orientation and Mobility Training
    o. Functional Vocational Assessments
    p. Vocational Training

3. **Employment Objectives** - Suggested Options

    a. Competitive Employment - No Support

b. Competitive Employment - On the Job Training
c. JTPA Programs
d. District Co-op Programs
e. Work-study
f. Youth Apprenticeships
g. Junior Achievement
h. Entrepreneurial Model
i. Job Corps
j. Supported Employment
k. School Based Training
l. Transitional or Time-Limited Employment Training
m. Supported Job - Special minimum wage license (Approval through the Department of Industry Labor and Human Relations and U.S. Department of Labor)
n. Supported Job - Targeted Jobs Tax Credit
o. Enclave Model
p. Mobile Work Crew
q. Full-time/Part-time
r. Job Sharing
s. Job Creating
t. Job Placement Services
u. Job Matching
v. Job Counseling

4. **Post-school Adult Living Objectives** - Suggested Options

a. Independent Living (No Need for Support)
b. Independent Living (Time-Limited Support)
c. Independent Living (Ongoing, But Infrequent Support)
d. Independent Living (Daily Support)
e. Supervised Apartment
f. Group Home Living (Supervision)
g. Group Home Living (Supervision and Training)
h. Group Home Living (Skilled Nursing)
i. With Roommate
j. With Family or Relative
k. Semi-independent Living Services
l. Intermediate Care Facility (ICF) - On-going support
m. Waivered Services
n. Adult Foster Care
o. Adult Nursing Home
p. Long term support services
q. Community Options Program
r. Family Support Program

5. **Daily Living Skills** (When Appropriate) - Suggested Curricular Areas

    a. Self-advocacy, Assertiveness Training, Legal Rights
    b. Parenting
    c. Community Resource Utilization
    d. Citizenship - Awareness, Participation
    e. Money Management
    f. Meal Preparation
    g. Housekeeping and Maintenance
    h. Self Care - Hygiene
    i. Recreation, Leisure
    j. Purchasing Food and Clothing
    k. Mental Health
    l. Physical Health
    m. Social Skills

6. **Functional Vocational Evaluation** (when appropriate)

Another definition of "functional" assessment is the popular term, "authentic" assessment. For many students with disabilities, standardized vocational assessment, including interest inventories, are invalid, unreliable and in some cases, discriminatory against the student's disability. In the arena of vocational assessment, the evaluation's purpose must be to improve the services to a student with disabilities to facilitate the student's completion of a vocational education program, not to exclude him/her. The assessment must focus on: the interactions of the student with instructors, peers, employers; training needs; work demands; environmental considerations; and necessary adaptations.

There is no magic recipe for a functional vocational evaluation since it is based on the concept of measuring student performance on actual job tasks or vocational activities in the natural environment where the activity occurs. The special educator should have the evaluation skills to spearhead the assessment process. For those occupationally specific tasks, the assessment should be guided by the special educator but conducted by the vocational educator or employer. The functional vocational assessment should provide information about the student's preferences, behavior, learning style, need for assistive devices, initiative, communication needs, physical and mental endurance, medical status, transportation needs, specific work skills, and specific methods of training and instruction needed. (See Section VI, page 94 for a detailed description of the functional vocational assessment process.)

All functional vocational evaluations should be conducted within the context of the M-Team evaluation and IEP:

- be recorded in the "present levels of performance," or "evaluation" sections of the IEP document;

- be utilized to measure student progress, appropriateness of program, need for modifications in program to enhance student success, and match and place students in appropriate vocational/work placements;
- be communicated to students to assist them to understand their strengths, limitations, the job market, and make career decisions;
- and be discussed with instructors, guidance counselors, employers and community service staff to provide necessary supports and adaptations for successful vocational experiences.

7. Rehabilitation Counseling Services

Rehabilitation counseling services are defined as related services in IDEA's rules and must be provided by qualified personnel, when determined by the IEP committee as necessary for the student to benefit from special education, "in individual or group sessions that focus specifically on:

- career development,
- employment preparation,
- achieving independence,
- and integration into the workplace
- and community, of a student with a disability." (34 C.F.R. 300.16 (b)(10))

In the comment section of the rules the Education Department states:

> "The Report of the House Committee on Education and Labor on Public Law 101-476 describes rehabilitation counseling as an important related service in special education, as well as an **important transition service in preparing students with disabilities for employment** or postsecondary education. In addition, the report states, 'It is the intent of the Committee that rehabilitation counseling...be provided to all students with disabilities for whom this service is necessary for the achievement of the individualized education program.'"

8. Assistive Technology Devices and Services

IDEA requires that **assistive technology devices and services** be provided to the student if the IEP committee determines they are necessary. (34 C.F.R. 300.308) Assistive technology is an important rule because of the concomitant responsibilities of medical and rehabilitation agencies to fund, evaluate the need for and provide assistive technology services and devices. The rule on assistive technology service specifically cites "coordinating...other...services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs," which is part of the transition process. (34 C.F.R. 300.6 (d))

The Department of Education's comments to this rule in part state:

> "the requirement in the (rule) limits the provision of assistive technology to educational relevancy - i.e., an assistive technology device or service is only required if it is determined, through the IEP process, to be
>
> a. special education, as defined in (the rules),
> b. a related service, as defined in (the rules),
> c. or supplementary aids and services required to enable a child to be educated in the least restrictive environment.
>
> The Secretary believes that the (rules) limit the provision of assistive technology devices and services to those situations in which they are required in order for a child to receive FAPE..."

C. Job Training Partnership Act (JTPA)

The **Federal Job Training Partnership Act** funds local school consortia projects (as well as WTCSs and Private Industry Councils) on a competitive basis which target "at risk" students, students with disabilities, low income and minority students. The emphasis of the projects must be to **keep youth in school while learning work maturity skills**, basic education skills, and job specific skills. Each student served in a JTPA program must have a "written employment/education development plan" the content of which is determined by the local Private Industry Council's work competency plans. These plans are required by federal law and every district is encouraged to participate in the comprehensive PIC planning process which sets local training priorities. For the 1992-93 school year, the JTPA public school projects served 1,492 students, 32% of whom were students with disabilities. For those students with disabilities, the IEP may be used to develop the student's written employment/education development plan which contains many of the components of transition service requirements. For those students with disabilities receiving JTPA services, the JTPA teacher should be participating on the IEP committee and contributing to the employment goals and objectives of the program. (See the following Job Training Reform Amendments of 1992 relating to students with disabilities.)

National Transition Network

Policy Update

Spring 1993

Job Training Reform Amendments of 1992

Expanded Opportunities for Youth and Adults with Disabilities

On September 7, 1992, the Job Training Reform Amendments of 1992, Public Law 102-367, were signed into law. The Amendments modify existing legislation, Public Law 97-300. Interim final regulations for the Job-Training Reform Amendments were published in the December 29, 1992, issue of the Federal Register, vol. 57 (pp. 62004-62073). Final rules are expected to be published on or around June 1, 1993, and remain substantially the same as published in the December 29 Federal Register. The purpose of this Policy Update is to present and discuss key aspects of the law and interim final rules that have potential implications for transition services nationally. We wish to acknowledge Mr. Paul Hippolitus, of the President's Committee on Employment of People with Disabilities, Washington DC, who provided the major portion of the narrative for reproduction in this Policy Update.

■ Participant Eligibility

The Job Training Reform Amendments of 1992 and the interim final rules expand the provisions of participant eligibility for youth and adults with disabilities. These changes in the law and subsequent regulatory language afford youth and adults with disabilities new and expanded opportunities to participate in a variety of training and employment programs. Procedures and criteria for determining participant eligibility are among the more significant changes.

The interim final rules contain two key parts relating to the Job Training Partnership Act (JTPA) eligibility for persons with disabilities. The first states that for the purpose of determining program eligibility, "persons receiving Supplemental Security Income (SSI) under Title XVI of the Social Security Act, will not have their SSI counted as income when determining eligibility" *Federal Register, vol. 57* ([Eligibility Determination and Intake], p. 62020).

The second major point contained within the interim final rules states that "an individual with a disability may [emphasis added], for the purpose of income eligibility determination, be considered to be an unrelated individual who is a family unit of one" *Federal Register, vol. 57* ([Definitions] p. 62029).

With regard to the latter point ("family of one" authority), there are two key considerations. First, in order to be implemented, the governor of each state must reiterate this policy within the state job-training plan. Second, under the prior rules, only youth with disabilities could be afforded this advantage. Now the advantage is extended to both youth and adults with disabilities. This is an important development that helps to support the postschool transition participation of adults with disabilities in JTPA-sponsored training and employment programs.

Earlier this year, the U.S. Department of Labor published its *Title II Eligibility Documentation and Technical Assistance Guide* (1993), which clarifies how disability status will be determined by JTPA intake workers. JTPA determinants include:

☐ Letter from drug or alcohol rehabilitation agency
☐ Letter from child-study team stating specific disability
☐ Medical records
☐ Observable condition (applicant statement needed)
☐ Physician's statement

The National Transition Network is a collaboration of the University of Minnesota; University of Vermont; Colorado State University; University of Arkansas; University of Illinois, Urbana-Champaign; Technical Assistance for Parent Programs; and PACER Center (Parent Advocacy Coalition for Educational Rights). Its headquarters are at the Institute on Community Integration (UAP), University of Minnesota, Pattee hall, 150 Pillsbury Dr. SE, Minneapolis, MN 55455, (612) 626-8200.

☐ Psychiatrist's diagnosis
☐ Psychologist's diagnosis
☐ Rehabilitation evaluation
☐ School records
☐ Sheltered workshop certification
☐ Social service records
☐ Social Security Administration disability records
☐ Veterans Administration letter/records
☐ Vocational Rehabilitation letter
☐ Workers Compensation record

If you are interested in receiving a copy of the *Title II Eligibility Documentation and Technical Assistance Guide*, write to: Hugh Davies, U.S. Department of Labor, Employment and Training Administration, Room N-4709, 200 Constitution Avenue NW, Washington, D.C. 20202; or call (202) 219-5580. The guide provides other useful information to assist youth and adults with disabilities in completing the participant eligibility process.

Criteria Established for "Hard-to-Serve" Individuals

In an effort to address the often-discussed "creaming" issue, the new amendments mandate services to the "hardest-to-serve" population. Section 263(b)(d) specifically defines "hard-to-serve" in-school and out-of-school youth as persons from 16 to 21 years of age. To be eligible for JTPA services, youth must first be identified as economically disadvantaged, unless enrolled in a school-wide project for low-income schools. Remember that under each state governor's order, youth with disabilities can be considered a family of one when determining economic eligibility. The Job Training Reform Amendments go on to state that for youth who are in school:

> *Not less than 65% of the in-school individuals who participate in a program under this part shall be individuals who are included in one or more of the following categories:*
>
> *(1) Individuals who are basic-skills deficient.*
> *(2) Individuals with educational attainment that is one or more grade levels below the grade level appropriate for the age of the individuals.*
> *(3) Individuals who are pregnant or parenting.*
> *(4) Individuals with disabilities, including a learning disability [emphasis added].*
> *(5) Individuals who are homeless or runaway youth.*
> *(6) Individuals who are offenders.*
> *(7) Individuals within a category established under subsection(h).*

At least 50% of the total participants in each service delivery area (SDA) must be out of school. For youth who are out of school, the Amendments specify that:

> *Not less than 65% of the out-of-school individuals who participate in a program under this part shall be individuals who are included in one or more of the following categories:*
>
> *(1) Individuals who are basic-skills deficient.*
> *(2) Individuals who are school dropouts.*
> *(3) Individuals who are pregnant or parenting.*
> *(4) Individuals with disabilities, including a learning disability [emphasis added].*
> *(5) Individuals who are homeless or runaway youth.*
> *(6) Individuals who are offenders.*
> *(7) Individuals within a category established under subsection(h).*

The Job Training Reform Amendments of 1992 also define hard-to-serve adults. As with the provisions for the hardest-to-serve in-school and out-of-school youth, eligible adult participants must first be economically disadvantaged and then fit one or more of the criteria listed below in order to be included in the mandatory 65%. With adults, the 10% rule is continued, but modified. That is to say, "Not more than 10% of participants . . . may be individuals who are not economically disadvantaged, if such individuals are age 22 or older and within one or more categories (those listed below)." To qualify as economically disadvantaged, adults must be one or more of the following:

> *(1) Individuals who are basic-skills deficient.*
> *(2) Individuals who are school dropouts.*
> *(3) Individuals who are recipients of cash welfare payments, including recipients under the JOBS Program.*
> *(4) Individuals who are offenders.*
> *(5) Individuals with disabilities [emphasis added].*
> *(6) Individuals who are homeless.*
> *(7) Individuals who are established under a category established under subsection(d).*

Training and Employment Programs Addressing Transition

The Job Training Reform Amendments of 1992 support a variety of transition programs and services. For example, under *Title II, Part A, Adult Training Program*, not more than 30% of funds available to an SDA may be used for administrative costs and support services. New in the law is a clarification of what was meant previously by *materials for the handicapped*. Now, support services may also include "materials for individuals with disabilities' job coaches."

This provision offers exciting opportunities for JTPA to sponsor supported employment job coaches. This advantage, however, is not meant to exclude the expenditure of regular training funds by other responsible agencies for job coaches. It is an added way to support this expense. This provides an excellent opportunity for state and local JTPA, education, vocational rehabilitation, and human service agencies to collaborate and develop resource-pooling and cost-sharing strategies when providing meaningful job supports for individuals with disabilities

The new amendments also promote the importance *and* availability of transition services under *Title II, Part C, Youth Training Program* provisions. In the statement of purpose (Section 261), the amendments state, "it is the purpose of the programs assisted under this part to . . . assist youth in addressing problems that impair the ability of youth to make successful transitions from school to work, apprenticeship, the military, or postsecondary education and training." Specific types of transition services are identified within Section 204(c)(1)(2). Services which may be available to youth with funds provided under Part C may include:

> *(1) Direct training services, including —*
> *(A) the services described in Section 204(b)(1);*
> *(B) tutoring and study skills training;*
> *(c) alternative high school services within programs that meet the requirements of Section 141(o)(1);*
> *(D) instruction leading to high school completion or the equivalent;*
> *(E) mentoring;*
> *(F) limited internships in the private sector;*
> *(G) training or education that is combined with community and youth-service opportunities in public agencies, non-profit agencies, and other appropriate agencies, institutions, and organizations, including Youth Corps Program;*
> *(H) entry employment experience program;*
> *(I) school-to-work transition services;*
> *(J) school-to-postsecondary education transition services;*
> *(K) school-to-apprenticeship transition services; and*
> *(L) pre-employment and work maturity skills training; and*
>
> *(2) training-related and supportive services, including —*
> *(A) the services described in Section 204(b)(2);*
> *(B) drug and alcohol abuse counseling and referral;*
> *(C) services encouraging parental, spousal, and other significant adult involvement in the program of the participant; and*
> *(D) cash incentives and bonuses based on attendance and performance in a program.*

Interagency Coordination

Certain provisions of the law also call attention to the importance of interagency coordination and collaboration in the design and delivery of appropriate employment and training programs that assist youth in the transition from school to work and community living. Under Section 123(c), titled *Governors' Plan Requirements*, state education agencies are required to submit for full inclusion in the Governors' Coordination and Special Services Plan, a description developed jointly by the state education agency and the governor of —

> *(1) the goals to be achieved and services to be provided by the school-to-work transition programs specified in Subsection (a)(2)(A) that will receive the assistance, which description shall, at a minimum, include information regarding —*
> *(A) the activities and services that will result in increasing the number of youth staying in or returning to school and graduating from high school or the equivalent;*
> *(B) the work-based curriculum that will link classroom learning to work-site experience and address the practical and theoretical aspects of work;*
> *(C) the opportunities that will be made available to participants to obtain career-path employment and postsecondary education;*
> *(D) the integration to be achieved, in appropriate circumstances, in the delivery of services between state and local educational agencies and alternative service providers, such as community-based and non-profit organizations; and*
> *(E) the linkages that will be established, where feasible, to avoid duplication and enhance the delivery of services, with programs under —*
>
> *(ii) the Elementary and Secondary Education Act (20 U.S.C. 2701, et seq.);*
> *(iii) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301, et seq.);*
> *(iv) the Individuals with Disabilities Education Act (20 U.S.C. 1400, et seq.);*
> *(viii) the National and Community Service Act of 1990 (42 U.S.C 12501, et seq.).*

Section 265(a) further stipulates the nature of linkages between educational and JTPA programs. The amendments state that such linkages shall include —

> *(2) arrangements to ensure that the program under this part supplements existing programs provided by local educational agencies to in-school youth;*

(3) arrangements to ensure that the program under this part utilizes, to the extent possible, existing services provided by local education agencies to out-of-school youth; and

(4) arrangements to ensure that for in-school participants, there is a regular exchange of information between the program and the educational agency relating to participant progress, problems, and needs, including, in appropriate circumstances, interim assessment results.

The development of meaningful linkages between JTPA and educational programs can, based on the aforementioned collaborative service provisions, provide youth with disabilities comprehensive in-school and out-of-school transition and related services. Today, we recognize that far too many youth with disabilities leave school early. This results in high levels of unemployment among these youth in adult life. Essential relationships between education, JTPA programs, and other community-based organization can go a long way in helping to facilitate the school completion and later-life employability of early school leavers.

■ PIC Membership Expands

Section 112(a)(2) and (3) expands Private Industry Council (PIC) membership to organized labor and community-based organizations. The statutory language states that:

> *(2) Representatives of organized labor and community-based organizations shall constitute not less than 15% of the membership of the council;*
>
> *(3) Representatives of each of the following:*
> *(A) Educational agencies (which agency shall be representative of all educational agencies in the service delivery area).*
> *(B) Vocational rehabilitation agencies.*
> *(C) Public assistance agencies.*
> *(D) Economic development.*
> *(E) Public employment service.*

This new section adds organized labor and a percentage for both organized labor and community-based organizations (15%) to make up each PIC. No specific percentage had been mandated previously. The definition of "community-based organizations" is:

> *Private non-profit organizations which are representative of communities or significant segments of communities and which provide job-training services, . . . neighborhood groups and organizations, community action agencies, . . . vocational rehabilitation organizations, rehabilitation facilities (as defined in Section 7[10] of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped.*

An important strategy in relation to Private Industry Council membership is to ensure that community-based organizations representing youth and adults with disabilities are involved on PICs. You can contact your State Job-training Office for further information concerning current membership lists for Private Industry Councils in your locality.

■ JTPA Accountability to Youth and Adults with Disabilities

Several provisions have been made to ensure that youth and adults with disabilities have full opportunities to participate in JTPA programs. Three primary provisions are presented here. The reader is encouraged, however, to review other sections of the Job Training Reform Amendments of 1992 and the interim final rules published on December 29.

Performance Standards

Under Section 106(g), *Adjustments for Special Populations*, specific performance standards are found. These provisions state:

> *The Secretary [of Labor] shall prescribe a system for variations in performance standards for special populations to be served, including . . . disabled and Vietnam era veterans, including veterans who served in the Indochina theater between August 5, 1964, and May 7, 1975.*

Performance standards are the accountability measure by which the U.S. Department of Labor measures the success of a service delivery area's program. Failure to meet them can lead to an adverse action. Variations to performance standards recognize that services to certain populations may take longer, cost more, etc. Thus, this added flexibility can facilitate the enrollment of persons with disabilities and Vietnam veterans in JTPA programs.

Nondiscrimination

Youth and adults with disabilities are protected against discrimination in all employment training programs under Section 144 of the Job Training Reform Act Amendments of 1992. This amends previous Section 167 of the Act (29 U.S.C. 1577) by adding at the end the following new subsection:

(e)(1) The head of the Office of the Department of Labor referred to as the Directorate for Civil Rights shall annually prepare a report on the administration and enforcement of this section.

(2) The report required by paragraph (1) shall include—
(E) a statistical summary, broken down by race, sex, national origin, disability, or age, of the number of inquiries undertaken and their outcomes;
(F) an identification of any service delivery area or state that has been determined, during the preceding year, to have failed to conduct objective assessments, as required by section 204 and 264, on a non-discriminatory basis;
(I) the number of cases referred to the Attorney General for such cases—
(ii) the use, by the Secretary, of the authority of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000[d], et seq.), the Age Discrimination Act of 1975 (29 U.S.C. 621, et seq.), or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

These provisions ensure that youth and adults who attempt access or who are served by JTPA programs are not discriminated against on the basis of disability, age, national origin, and other characteristics. Infractions of these federal non-discrimination statutes shall be formally tracked, documented, and reported to the Secretary of Labor annually.

Human Resource Investment Councils

Lastly, state-level "Human Resource Investment Councils" are authorized and may be established under the new amendments. The purpose of these councils is to "review the provision of services and the use of funds and resources under applicable Federal human resource programs and advise the Governor on methods of coordinating . . . such programs." The programs this council may review include those authorized under—

this Act;
the Carl Perkins Act;
the National and Community Services Act;
the Adult Education Act;
the Wagner Peyser Act;
part F of Title IV of the Social Security Act; and
the Employment Program of the Food Stamp Act.

It may not include "Programs authorized under the Rehabilitation Act of 1973." Further, with regard to these Councils, "individuals who have special knowledge and qualifications with respect to special education and career development of hard-to-serve individuals" may also be included as members. The effective date for most of the provisions of these amendments is July 1, 1993.

State-By-State Participation Rates of Youth and Adults with Disabilities in JTPA Programs

Annually, the President's Committee on Employment of People with Disabilities, in cooperation with the U.S. Department of Labor, reviews and analyzes available data on the participation of people with disabilities in Job Training Partnership Act (JTPA) programs nationally. Table 1 reports on the total number of adults and youth. Selected excerpts from the most recent report, published by the President's Committee on Employment of People with Disabilities in April 1993, entitled *People with Disabilities: In our Nation's Job Training Partnership Act Programs*, are provided here for your review. It is hoped that this information may be useful in making state-by-state comparisons concerning the participation rates of youth and adults with disabilities in JTPA programs.

Table 1 displays the total number of adults and youth who "terminated" from JTPA Title II programs during program year 1991. "Terminees" are defined as JTPA program participants who have separated, that is: (1) those who have entered unsubsidized employment; (2) those who are youth who have received employability enhancement (attained PIC-recognized competencies, entered non-Title II training, returned to full-time school, or completed a major level of education); or (3) all other terminations, successful or otherwise (e.g., dropouts).

The data reported in Table 1 indicate that during the 1991 program year, 271,391 adults terminated from Title II-A programs. Of this number, 29,715 were adults with disabilities. This represents 10.9% of all adult terminees for Title II-A programs. Also during program year 1991, 254,758 youth were terminated from Title II-A programs, of which 38,021 were youth with disabilities.

It is significant to note, in reviewing data from previous years, that the number of adults and youth with disabilities who terminated Title II-A programs has increased over the previous program year's figure (except for program year 1990).

In reviewing Table 1, wide variations among states are noted in the percentage of terminees who are individuals with disabilities. In an effort to find an explanation for this wide variation by state, the President's Committee on Employment of People with Disabilities reviewed population figures for individuals with disabilities for each state to determine whether some states have either a significantly greater or lesser percentage of people with disabilities available to participate in JTPA programs. Findings, however, revealed a relatively constant percentage of people with disabilities from state to state. Thus, it appears that the

Table 1
JTPA Title II-A Programs
Adults and Youth with Disabilities Terminations
Program Year 1991

State	Total Adult Terminees	Adults with Disabilities	%	Total Youth Terminees	Youth with Disabilities	%
Alabama	4,250	435	10.2	5,101	429	8.4
Alaska	659	73	11.1	881	164	18.6
Arizona	3,076	338	11.0	3,078	284	9.2
Arkansas	3,674	289	7.9	4,469	247	5.5
California	25,253	2,513	10.0	21,120	3,338	15.8
Colorado	5,631	831	14.8	3,470	558	16.1
Connecticut	1,572	95	6.0	1,774	455	25.6
Delaware	891	186	20.9	477	166	34.8
District of Columbia	815	42	5.2	177	2	1.1
Florida	16,138	2,100	13.0	15,192	3,204	21.1
Georgia	6,829	664	9.7	6,178	788	12.8
Hawaii	601	64	10.6	684	251	36.7
Idaho	1,459	352	24.1	1,296	261	20.1
Illinois	12,625	1,103	8.7	12,158	2,327	19.1
Indiana	5,842	379	6.5	4,158	582	14.0
Iowa	2,152	296	13.8	1,415	289	20.4
Kansas	1,338	170	12.7	1,145	241	21.0
Kentucky	5,076	406	8.0	6,999	725	10.4
Louisiana	7,131	354	5.0	11,003	821	7.5
Maine	746	123	16.5	485	123	25.4
Maryland	6,654	358	5.4	4,178	510	12.2
Massachusetts	3,540	261	7.4	3,488	536	15.4
Michigan	15,352	2,536	16.5	10,769	2,394	22.2
Minnesota	6,431	761	11.8	3,162	617	19.5
Mississippi	8,084	666	8.2	7,936	405	5.1
Missouri	5,559	353	6.4	5,843	776	13.3
Montana	1,258	271	21.5	831	127	15.3
Nebraska	839	136	16.2	712	90	12.6
Nevada	1,005	134	13.3	1,054	267	25.3
New Hampshire	643	86	13.4	545	227	41.7
New Jersey	4,456	198	4.4	3,268	834	25.5
New Mexico	1,559	157	10.1	2,147	381	17.7
New York	16,274	1,471	9.0	12,409	1,717	13.8
North Carolina	5,258	567	10.8	5,312	1,068	20.1
North Dakota	491	97	19.8	391	65	16.6
Ohio	15,823	1,432	9.1	13,074	2,585	19.8
Oklahoma	3,413	159	4.7	3,027	260	8.6
Oregon	3,562	508	14.3	2,588	338	13.1
Pennsylvania	9,629	771	8.0	7,022	1,379	19.6
Rhode Island	629	23	3.7	887	182	20.5
South Carolina	2,949	331	11.2	3,353	285	8.5
South Dakota	1,268	165	13.0	1,080	255	23.6
Tennessee	5,229	378	7.2	6,980	1,505	21.6

continued on next page

Table 1 continued

State	Total Adult Terminees	Adults with Disabilities	%	Total Youth Terminees	Youth with Disabilities	%
Texas	17,692	1,606	9.1	22,629	1,654	7.3
Utah	1,343	281	20.9	842	162	19.2
Vermont	1,028	121	11.8	588	196	33.3
Virginia	5,319	646	12.1	4,487	1,544	34.4
Washington	4,288	700	16.3	4,086	513	12.6
West Virginia	3,058	2,412	78.9	2,055	42	2.0
Wisconsin	5,600	1,095	19.6	4,639	1,534	33.1
Wyoming	735	127	17.3	543	71	13.1
American Samoa	306	3	1.0	187	0	0.0
Micronesia	661	0	0.0	993	44	4.4
Guam	169	16	9.5	478	89	18.6
Marshall Islands	115	2	1.7	724	7	1.0
Northern Marianas	9	2	22.2	28	11	39.3
Palau	82	3	3.7	37	1	2.7
Puerto Rico	5,260	69	1.3	11,036	95	0.9
Virgin Islands	63	0	0.0	90	0	0.0
U.S. TOTALS	**271,391**	**29,715**	**10.9**	**254,758**	**38,021**	**14.9**

availability or prevalence of individuals with disabilities is not a factor in explaining the wide variation by state.

Further investigation by the President's Committee on Employment of People with Disabilities indicates that there are probably two main factors affecting the number and percentage of the total population of individuals with disabilities served by JTPA programs on a state-by-state basis. They are:

- **Involvement of Organizations**: It appears that the extent of involvement of groups and organizations representing people with disabilities in the policy or management of JTPA programs (at either the state or SDA level, most often at both levels), has a major affect on the number of individuals with disabilities identified and served by JTPA programs in a state. In states where disability-related organizations were active in promoting their JTPA program's involvement in serving eligible people with disabilities, the President's Committee found greater numbers of people with disabilities actually served. Conversely, in states where disability-related groups were less involved in JTPA programs, lower percentages of people with disabilities were found as program participants.
- **Unemployment Rates**: A second factor found by the President's Committee on Employment of People with Disabilities to contribute to the wide state-by-state (and in many cases, SDAs) variation in the proportion of individuals with disabilities served in JTPA programs was the state's or SDA's unemployment rate. In those states or SDAs with unemployment rates higher than the national average, the proportion of JTPA Title II-A terminees with disabilities tended to fall below the national average. The converse also tends to be true; in states where unemployment rates are lower than the national average, individuals with disabilities make up a larger proportion of the total number of individuals terminated from JTPA Title II-A programs.

Strategies for Increasing Participation Levels Among Youth and Adults with Disabilities

The President's Committee offers some strategies and recommendations for state and local programs in their efforts to increase the number of people with disabilities in their programs. These strategies include:

- The new amendments appear to encourage broader participation among organized labor and community-based organizations on Private Industry Councils. State and local agencies and organizations should review the membership makeup of their Private Industry Councils or State Job-Training Coordinating Council to ensure that individuals with disabilities, or those who represent the training and employment needs of people with disabilities, are included as members of both decision-making bodies.

☐ When establishing priorities for funding or issuing requests for proposals, indicate the need to serve people with disabilities along with various targeted sub-groups, i.e., women, minorities, displaced workers, etc.

☐ Publicize the "family of one" authority for youth and adults with disabilities among all intake workers.

☐ Engage in informational outreach activities with a variety of organizations and agencies involved in serving people with disabilities. These include state vocational rehabilitation programs, state and local special education units, organizations of people with disabilities, and parent groups. Additional information about these groups can be obtained by consulting local phone and resource directories.

☐ Educational and community service agencies (i.e., vocational rehabilitation, human services, others) should actively encourage JTPA program representatives to participate on interagency teams addressing the transition needs of youth with disabilities. Active discussions concerning resource pooling and cost-sharing strategies to support a broad range of training and employment goals for youth with disabilities should be undertaken.

Persons interested in securing additional information concerning the Job Training Reform Amendments of 1992 and/or the interim final rules published in the *Federal Register, vol. 57*, on December 29, 1992, should consult with their State Job Training Office or local service delivery area representative. Individual copies of the report entitled *People with Disabilities: In Our Nation's Job Training Partnership Act Programs* (program year 1991) may be requested from the President's Committee on Employment of People with Disabilities, 1331 F Street NW, Washington, D.C. 20004-1107.

The National Transition Network would like to again thank Mr. Paul Hippolitus, of the President's Committee on Employment of People with Disabilities, for his assistance in preparing this Policy Update.

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Collaborators of the National Transition Network are equal opportunity employers and educators.

D. Carl Perkins Vocational and Applied Technology Education Act

The **Carl Perkins Vocational and Applied Technology Education Act** corresponds closely with the principles embedded in IDEA regarding transition planning and emphasizes **vocational education improvement for special populations,** primarily people with disabilities. "It is the purpose of this act to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population."

Wisconsin's state plan for the utilization of Carl Perkins funding is based on five goals:

1. To provide Tech Prep and youth apprenticeship options to all people and groups equally and without discrimination.
2. To develop Tech Prep and youth apprenticeship options that continually and systematically respond to the trends and demands of the marketplace.
3. To amplify and expand the "whole person" concept of education within Tech Prep and youth apprenticeship options.
4. To elevate and extend standards of excellence in classroom and laboratory instruction, supervised experiences and student organizations.
5. To provide leadership and cultivate strong partnerships in the total educational system and with business, industry, and labor.

For all programs funded with Carl Perkins money, equal access must be provided for handicapped students and other special populations in the areas of recruitment, enrollment, and placement. Information indicating the opportunities available in vocational education, placement services, employment, and vocational and employment services must be provided to K-12 students and parents by school districts. Districts must also provide trained counselors for students with disabilities to assist the students in career planning and vocational programming by ninth grade, and in planning the transition from school to work. In addition, districts must assess their programs and their students completion of vocational programs in integrated settings, and they must ensure that supplementary services are made available to all students with disabilities including modification in curriculum, equipment, classrooms, support personnel, and instructional aides and devices.

E. The Americans with Disabilities Act (ADA)

The **Americans with Disabilities Act of 1990** insures that people with disabilities, including students, have **equal access to employment**, transportation, public accommodations, and telecommunications. In order to provide that access, reasonable accommodations must be made in employment; new public transit vehicles must be accessible or paratransit service provided; auxiliary aids and services must be provided by businesses and public services to enable a person with a disability to use and enjoy the goods and services available to the public; and telephone companies must offer telecommunications devices for the deaf or similar devices 24 hours a day. All students with disabilities should be instructed in the principles of this law, how it applies to them and how they can invoke it when necessary.

F. Rehabilitation Act

The **Rehabilitation Act of 1973** was reauthorized in 1992 and attempted to incorporate the principles of ADA within its amendments. Of import to schools is the requirement for mutual transition planning between schools and DVR before a student exits school. According to Mr. Bobby Silverstein, Staff Director to the Senate Subcommittee on Disability Policy which developed the amendments,

> "the purpose (of the transition planning requirements of DVR and schools) is to ensure that students who require vocational rehabilitation services receive them in a timely manner. There should be no gaps in services between the education system and the vocational rehabilitation system. An eligible individual's rehabilitation plan must be completed before the individual leaves the school system. In terms of transition services, we intended to make sure they would be available for students in special education who have an IEP and also for students with disabilities who are in the regular class and who may not need 'special education.' These provisions are not intended to shift the responsibility of service delivery from education to rehabilitation during the transition years. School officials must continue to be responsible for providing services for free public education." (From the National Transition Network Teleconference, March 25, 1993)

The Division of Vocational Rehabilitation is required to provide vocational rehabilitation services to interested and eligible individuals with no age exclusions. There are two eligibility standards:

1. The presence of a physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment; and

2. the individual requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. (34 CFR 361.31)

The amendments adopted IDEA's definition of transition verbatim and require DVR to establish policies and methods to facilitate the transition from school to the rehabilitation service system. Implicit in the vocational rehabilitation regulations are transition activities which correspond with IDEA requirements and state:

> When services are being provided to an individual with disabilities who is also eligible for services under the Individuals with Disabilities Education Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for the individual. (34 CFR 361.41 (c))

The Rehabilitation Act has always contained strong **protection**, in section 504 of its implementing regulations, **against discrimination on the basis of handicap in employment**, accessibility, preschool, elementary and secondary education, postsecondary education, and health, welfare and social services. Similar to the appeal rights students and parents have under IDEA, the Rehabilitation Act requires that each state have an advocacy program for people seeking or receiving Vocational Rehabilitation services. In Wisconsin, that program is the Client Assistance Program (CAP) which can be reached at (608) 267-7422, TDD - (608) 267-2082, and 1-800-362-1290.

G. Social Security Act

The **Social Security Administration** provides an entitlement program to people with disabilities. Until recently, the **Supplemental Security Income** (SSI) program for which many students with disabilities qualify, has been viewed as actually promoting dependency and presenting obstacles for people with disabilities attempting to become self-supporting. The following article from the National Clearinghouse on Postsecondary Education for Individuals with Disabilities describes SSI programs that can be used to promote independence for students with disabilities.

SOCIAL SECURITY WORK INCENTIVES — NON-TRADITIONAL FUNDING SOURCE FOR EDUCATING YOUTHS WITH DISABILITIES

[Guest contributor John R. Woodward, M.S.W. is a counselor at the Center for Independent Living of North Florida, Inc. He frequently advises young people in school to work transition programs about SSI Work Incentives and has written extensively on the topic. He welcomes comments about this article. John can be reached at 1380 Ocala Road, Suite H-4, Tallahasse, FL 32304. (904) 575-9621.]

The Social Security Administration (SSA) provides millions of dollars each year in funding for *Work Incentives*, benefits available to persons who receive Supplemental Security Income (SSI) who wish to make the transition from receiving SSI to earning part or all of their livelihoods. The SSI *Work Incentives* were also designed to help young people make a smooth transition into their first jobs, without having to face the wrenching experience of losing all their benefits at once. In addition, the incentives can be used as a non-traditional source of funding to empower the young person with a disability and his or her family to write his or her own rehabilitation plan. Unfortunately, few families, rehabilitation professionals, or educators understand how to use the SSI *Work Incentives*. Some of them, such as **PASS** and **PESS**, can be used to fund postsecondary education directly. The others support part-time employment and the school-to-work transition.

The **Plan to Achieve Self Support (PASS)** is the most important of the SSI *Work Incentives*. With PASS, unlike most of the other incentives, a student with a disability does not have to begin working before he or she can use the PASS system. PASS has two functions: one is to shelter income, such as job earnings, an inheritance, insurance benefits, or any other income that would otherwise make it impossible to keep SSI. *The sheltered income must be put aside for use in a program intended to train or otherwise prepare the SSI recipient for self-supporting work.* PASS's second function is to increase the SSI check to the full monthly benefit amount (which varies from state to state), if the increase is set aside for work preparation. A PASS plan may pay for tuition, books, personal assistance services, tutoring, adaptive medical equipment, the purchase of a computer, or any other purpose that prepares the PASS recipient for self-supporting work. The Social Security Administration has a PASS form that outlines the expenses that can be paid for by PASS funds, the steps to be taken to prepare the PASS recipient for work, and the timetable for completing them. The SSA must approve a PASS plan before it can be implemented, but no other agency need approve it. Once a PASS is approved, the recipient must document his or her expenses with a few simple records so the SSA can review the PASS plan periodically. Congress has directed the SSA to interpret the PASS rules as broadly as possible so as to serve the largest number of people. Many persons formerly deemed "ineligible" for Vocational Rehabilitation (VR) services have been served by PASS. (In some cases, a young person with a disability may supplement mainline VR benefits by filing a PASS plan to obtain an item not funded through VR, such as a vehicle or a computer.)

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1-800-SSA-1213

A similar *Work Incentive*, the **Property Essential to Self-Support (PESS)** enables a person on SSI to keep or accumulate property that otherwise would make him or her ineligible for SSI. This can include property used for educational purposes, such as a computer, which might not be permissible otherwise.

Most other SSI *Work Incentives* require that the applicant be working at the time he or she files for them. Nonetheless, a knowledge of the remaining SSI *Work Incentives* is essential to consumers and anyone who does career counseling with persons receiving SSI. Often, they can be used to fund services (such as personal assistance services) that otherwise may not be available. They also can be used to enable a young person with disabilities to develop critical work experience in part-time jobs, without endangering SSI or Medicaid benefits.

The **Student Earned Income Exclusion** makes it possible for young persons who receive SSI to participate in paid internships, sheltered workshops, and other part-time employment while they are in school. (The employment does not have to be directly related to one's educational plan.) The standard **Earned Income Exclusion** allows those who receive SSI to keep roughly half of their benefits when they take an entry-level job and phase out SSI as their income rises. The **Earned Income Exclusion** is used by many young persons with disabilities who work part-time to provide money for tuition.

The **Blind Work Expenses** allow people with visual impairments to exclude all their employment-related expenses when their benefits are determined, while the **Impairment-Related Work Expenses (IRWE)** permit persons with other disabilities to exclude expenses that are specifically related to their disability. IRWE can provide payments to cover ongoing costs such as personal assistance services, transportation, disability-related medical bills, and wheelchair maintenance.

Subsidies allow SSI recipients in competitive employment to draw benefits based on the real value of their work, if it is substantially less than the value of their paycheck.

Section 1619 Work Incentives make it possible for SSI recipients in low-paying entry-level jobs to keep SSI and/or Medicaid indefinitely, if they meet certain requirements. Finally, **Continued Payments Under Vocational Rehabilitation Plan** enable persons who are considered "medically recovered" to continue to receive their benefits while they finish a vocational rehabilitation program. ("Medically recovered" in this context does not mean "no longer disabled." A person can be "medically recovered" if surgery, medication, or some other treatment has reduced the level of impairment enough that one can be considered capable of working.)

A word of caution is in order: The Social Security Administration does not always implement the *Work Incentives* efficiently. Over the past twelve years the work incentives have been given very low priority, so few SSA employees are trained in the *Work Incentives*. An inexperienced or uncertain SSA employee will often reject a valid *Work Incentive* plan. Therefore, it is important that persons who want to use the *Work Incentives* learn all they can about them through independent sources.

Those interested can get started by calling the local SSA Field Office and asking for two documents: **The Red Book on Work Incentives** (SSA Pub. #64-030) and **Working While Disabled** (SSA Pub. # 05-11017). These are the official SSA guides to the general *Work Incentives* system and the PASS program in particular. The Center for Independent Living of North Florida, Inc. publishes a manual on the *Work Incentives* that provides additional details on issues that are not covered in **The Red Book**, such as application procedures and record keeping. **The ACCESS Guide to the Social Security Work Incentives** is available by prepaying $5.00 (includes postage and copying) to CIL of North Florida, Inc. Request CIL of North Florida, Inc., 1380 Ocala Road, H-4, Tallahassee, FL 32304. ■

H. School to Work Opportunities Act

In June of 1994, Wisconsin received a $27 million grant under the School to Work Opportunities Act. This legislation authorizes funding for school-employer partnerships combining academics and work experience. School-to-work training would be available to all students but the legislation is designed primarily to help the 75 percent of American youth who will not pursue a four-year college degree. As such, this legislation could have a very positive effect on individuals with disabilities who do not plan to attend college.

The legislation sets up grant programs to enable students to participate in apprenticeships with local industries in a variety of jobs that require skills workmanship. The program is **jointly administered by the Secretary of Labor and the Secretary of Education**.

Among the purposes of this Act are:

1) to establish a national framework within which all States can create statewide School-to-Work Opportunities systems which are part of overall education reform, are integrated with Goals 2000, and which offer opportunities for participation by all students;

2) to facilitate the creation of a universal, high-quality school-to-work transition system that enables youth to move along a path that leads to productive employment;

3) to utilize workplaces as active learning environments;

4) to promote the formation of local partnerships that are dedicated to linking the worlds of school and work among secondary schools and postsecondary educational institutions, private and public employers, labor organizations, government, community-based organizations, parents, students, SEAs, LEAs, and training and human service agencies;

5) to motivate all youths, including low achieving youths, school dropouts, and youths with disabilities, to stay in or return to school or a classroom setting and strive to succeed, by providing enriched learning experiences and assistance in obtaining good jobs and continuing their education in postsecondary educational institutions

Among the items defined in the definitions section are:

All students -	means both male and female students from a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, or cultural

backgrounds, American Indians, Alaska Natives, Native Hawaiians, **students with disabilities**, students with limited English proficiency, migrant children, school dropouts, and academically talented students.

Career Guidance and Counseling - means programs that pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision making, placement skills, and knowledge and understanding of local, state, and national occupational, educational, and labor market needs, trends and opportunities; that assist individuals in making and implementing informed educational and occupational choices; and that aid students to develop career options with attention to surmounting gender, race, ethnic, disability, language, or socioeconomic impediments to career options and encouraging careers in non traditional employment.

Career Major - means a coherent sequence of courses or field of study that prepares a student for a first job and that integrates academic and occupational learning, prepares the student for employment in a broad occupational cluster or industry sector, provides the student with strong experience in and understanding of all aspects of the industry, results in the award of a high school diploma or its equivalent, such as an alternative diploma or certificate for students with disabilities for whom such alternative diploma or certificate is appropriate.

Local Partnership - means a local entity that is responsible for local School-to-Work programs consisting of employers, representatives of LEAs and local postsecondary educational institutions, local educators, representatives of labor organizations, and students and may also include community-based organizations, national trade associations working at the local levels, industrial extension centers, rehabilitation agencies and organizations, local vocational education entities, parent organizations, teacher organizations, vocational student organizations, or private industry councils.

SCHOOL-TO-WORK OPPORTUNITIES ACT'S BASIC PROGRAM COMPONENTS

School-to-work programs must provide "all students with equal access to the full range" of the required program components: school-based learning, work-based learning, and connecting activities.

School-Based Learning Component: The school-based learning component must include:

- career awareness and career exploration and counseling, beginning no later than the 7th grade;
- initial selection of a career major by interested students no later than the 11th grade;
- a program of study designed to meet the State academic content standards, including standards developed under Goals 2000, and to meet requirements necessary for postsecondary education and a skill certificate;
- a program of instruction and curriculum that integrates academic and vocational

learning and incorporates instruction, to the extent practicable, in all aspects of an industry related to the student's career major;
- regularly scheduled evaluations with students and dropouts to identify their strengths and weaknesses and areas for additional learning opportunities;
- and procedures for easy entry into additional training or postsecondary education and to facilitate the transfer of students between education and training programs.

Work-Based Learning Component: The work-based learning component must include:

- work experience;
- a program of job training and work experiences which are relevant to the career major of the student and which are coordinated with the school-based learning component;
- workplace mentoring;
- instruction in general workplace competencies; and
- broad instruction, to the extent possible, in all aspects of the industry.

Connecting Activities Component: The connecting activities component must include:

- matching students with the work-based learning opportunities of employers;
- providing for each student a school site mentor to act as a liaison between the student and others;
- providing technical assistance and services to employers and others in designing school-based learning components, counseling and case management services;
- and training teachers, workplace and school site mentors, and counselors;
- providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning into the program;
- encouraging the active participation of employers in school-based and work-based learning programs;
- **providing assistance to participants in finding appropriate jobs, continuing their education, or securing additional training and linking participants with community services that may be necessary to ensure a smooth transition from school to work;**
- and linking youth development activities with employer and industry strategies for upgrading the skills of their workers;
- and collecting and analyzing information regarding post-program outcomes on the basis of socioeconomic status, race, gender, ethnicity, culture and disability and on the basis of participants who are limited English proficient, school dropouts, disadvantaged students or academically talented students.

State Implementation Grants: The purpose of the state implementation grants is to assist states in the implementation of comprehensive statewide school-to-work opportunities systems.

A state may receive one implementation grant (Wisconsin received this in June of

1994) which shall not exceed five years in length. The application for a grant can be combined and coordinated with the Goals 2000 application.

The application must include a comprehensive state plan, how funds will be allocated, any requests for waivers, and how various state officials will collaborate.

State Implementation Grant State Plan: The state plan must include a variety of items. **The comprehensive school-to- work system plan must describe (this is not a complete list):**

1) the manner in which the State has obtained and will continue to obtain the active and continued involvement of employers and other interested parties;
2) how the system will coordinate with or integrate local school-to-work programs already in existence;
3) the strategy for providing training for staff, including specialized training for the counseling and training of women, minorities, and **individuals with disabilities**;
4) how the state will adopt, develop or assist local partnerships to adopt or develop innovative instructional methodologies;
5) how the state will expand and improve career and academic counseling in elementary and secondary schools;
6) the strategy for integrating academic and vocational education;
7) the extent to which the state system will include programs that require paid high-quality, work-based learning experiences and the steps the state will take to generate such experiences;
8) how the state will **ensure opportunities to participate for** women, low achieving students, **students with disabilities**, school dropouts, and academically talented students;
9) how the state will serve students from rural communities with low population densities;
10) the performance standards that the state intends to meet in establishing and carrying out the statewide system; and
11) procedures to ensure access to additional training or postsecondary education.

Additional activities that a state may carry out are:

1) recruit and provide assistance to employers;
2) provide training for teachers, employers, workplace mentors, school site mentors, counselors, related services personnel, and other parties;
3) design or adapt model curricula that can be used to integrate academic, vocational and occupational learning;
4) conduct outreach activities; and
5) design career awareness and exploration activities.

Not less than 70% of the State's grant in the first fiscal year must be used for subgrants to local partnerships, with not less than 80% in the second year and not less than 90% in the third and subsequent years.

In reviewing state plans, priority will be given to applications that require paid, high-quality work-based learning experiences.

Subgrants to Local Partnerships: A local partnership may submit an application for a subgrant to the State. **Allowable activities under these subgrants include:**

1) designing or adapting school curricula to integrate academic, vocational, and occupational learning, school- and work-based learning, and secondary and postsecondary education for all students;
2) establishing a graduation assistance program to assist at-risk and low-achieving students and students with disabilities in graduating from high school, enrolling in postsecondary education or training, and finding or advancing in jobs;
3) providing services for career exploration and awareness, counseling and mentoring, and college awareness and preparation beginning not later than 7th grade;
4) providing supplementary and support services, including child care and transportation;
5) integrating school- and work-based learning into currently existing job-training programs for school dropouts; and
6) establishing or expanding school-to-apprenticeship programs.

The legislation includes the following **prohibitions**:

1) no student shall displace any currently employed worker;
2) no program shall impair existing contracts for services or collective bargaining agreements;
3) no student shall be employed or fill a job when another individual is on temporary layoff or when an employee has been terminated; and
4) no funds appropriated under this Act shall be used for wages for students or mentors.

The following chart compares the similarity of requirements in the School to Work Opportunities Act of 1993 to IDEA's transition requirements.

Inter-relationship of Transition Service Requirements of IDEA and the School-to-Work Opportunities Act

School-to-Work Opportunities Act of 1993	Individuals with Disabilities Education Act of 1990 (IDEA): Transition Requirements
Work-Based Learning Component	
• Job training experiences relevant to student career	• "transition services" means a coordinated set of activities for a student, designed within an outcome oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adults services, independent living, or community participation
• Paid work experiences	
• Workplace mentoring	
• Instruction in general workplace competencies	
• Instruction in variety of elements of industry	
School-Based Learning Component	
• Career exploration and counseling to identify career interests and goals	• Include (1) instruction, (2) community experiences, (3) development of employment and other post-school adult living objectives, and (4) if appropriate, acquisition of daily living skills and functional vocational evaluation
• Program of study designed to meet the standards set by Goals 2,000: Educate America Act	
• Regularly scheduled student evaluations	• Annual planning and review meetings; functional vocational assessment; assessment of student's needs & interests
• Early selection of career focus: 11th grade	• The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate)
Connection Activities Component	
• Match students and employers	• Development of employment and other post-school adult living objectives based on students' interests
• Serve as liaisons among employer, school, educator, parent, & student	• The IEP must include a statement of transition services including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting
• Provide technical assistance and services to employers, educators, case manager, counselors	
• Provide assistance to students who have completed their program in finding a job, continuing their education, etc.	• Student participation is required in the development of transition planning
• Link youth development activities with employer strategies for upgrading worker skills	• Development of employment and other post-school adult living objectives based on students' interests
• Collect and analyze information regarding post-program outcomes of students	• Graduation assistance is provided

III. WISCONSIN LEGISLATION

Several state education and labor laws complement and amplify the transition and employment requirements of federal laws. Wisconsin has existing programs and mandates within the public schools for all students which meet many of the transition principles and our child labor laws have been the model for federal labor legislation. The special educator should become conversant with these laws and regulations in order to advocate for the inclusion of students with disabilities in all the vocational options available in Wisconsin. These programs must be utilized to provide the necessary resources to ensure successful transition for students with disabilities.

A. Compulsory School Attendance

Within **Wisconsin's Compulsory School Attendance Law (118.15)** are program options for all students which may be very appropriate as transition services for some students with disabilities as determined by the IEP committee. Among those options are:

1. Upon the child's request of the school board and with written approval of the parent, any child who is 16 years of age or over **and a child at risk** (which many students with EEN are) may attend full or part-time a program at the Wisconsin Technical College System (WTCS) district which leads to high school graduation. The WTCS must admit the child and offer day classes to meet the district's graduation requirements. ss.118.15(1)(b)

2. Students aged 16 and over or the students' parents may request of the school board, in writing, **a school work training or work study program** which leads to high school graduation. ss.118.15(1)(d)2

Work study programs for all students must comply with the Compulsory School Attendance statute, Wisconsin's Education for Employment legislation, Worker's Compensation Law, and child labor laws including the **Fair Labor Standards Act**. Among those requirements are the following:

1. The student will receive at least minimum wage or have a special minimum wage license.
2. The student must have a work permit.
3. The student must be age 16 or over.
4. The parents must approve.
5. The work experience must lead to high school graduation (credits must be awarded).
6. The work experience must be supervised by licensed teachers.
7. The work experience must be paired with instruction.

8. Transportation between work and school, if necessary, must be at no cost to the student or parents.
9. While at work, students are covered by the employer's Worker's Compensation Insurance.
10. Teachers and other district staff working in the community based site are covered under the district's Worker's Compensation Insurance.

B. Education for Employment (ss. 121.02(1)(m), Wis. Stats.)

Wisconsin's **Education for Employment Standard** is much broader than just work experience and provides an excellent vehicle to coordinate transition services for students with disabilities. Under the legislation, each school district is required to establish an Education for Employment Council, Under the legislation, each school district is required to establish an Education for Employment Council (which now may be retitled the "School to Work Council"),the composition of which must be at least 50% business and industry representatives from the community. This council assists the district by: gathering economic and labor market data from which to develop appropriate vocational curriculum; suggesting improvements to curriculum; participating in the provision of work experiences for students; establishing vocational goals and objectives based on local employment data; and conducting student follow up studies. This council is a natural mechanism from which to build the interagency transition linkages required in IDEA as well as to introduce the new employment of people with disabilities requirements of the Americans with Disabilities Act.

The Education for Employment program plan which each district develops must include a K-12 career education program; career exploration, planning and decision making opportunities; school supervised work experiences; contemporary vocational education programs; business and economic curriculum; and practical application of basic skills. In order for students with disabilities to make realistic career choices, express their preferences and be prepared for post-secondary education, adult living and employment as required in transition legislation, they need to be included in the Education for Employment program according to the IEP committee's individually tailored program.

C. Youth Apprenticeship (ss. 101.256, Wis. Stats)

The **Youth Apprenticeship Program** (ss. 101.265) of 1991 is administered by the Department of Industry, Labor and Human Relations (DILHR) in partnership with the Department of Public Instruction, the Wisconsin Technical College System, local school districts, and business and labor. The program provides integrated school-based learning and work-based learning for high school students that affords youth with academic and occupational skills leading to both a high school diploma and a certificate of occupational proficiency in a specific industry. The programs use state-approved industry standards that prepare students in an occupational cluster for entering employment or continuing in post-secondary education. The apprenticeships are paid work experiences.

D. Technical Preparation (ss. 188.34, Wis. Stats.)

Wisconsin's **Technical Preparation Program** mandate requires high schools to establish a technical preparation program in cooperation with the local WTCS district which consists of a sequence of courses designed to allow high school pupils to gain advanced standing in the WTCS's associate degree program upon graduation from high school. Special educators should be participating on the local Tech. Prep. Councils to insure that EEN students are included in the program and to assist in policy development which addresses how IEPs can "articulate" Tech. Prep. program modifications for EEN students.

The following article describes how appropriate Tech-Prep assessment can facilitate acccess to vocational programs for students with disabilities.

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1. Validation of Vocational Assessment Services for Special Populations in Tech-Prep: A Model for Translating the Perkins Assurances Into Practice

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> *Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."*
> *Argument in the defense of British soldiers in the Boston Massacre Trials; December, 1779*

Abstract—This article describes a state study that analyzed the extent to which assessments are used to accommodate key assurances prescribed by the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. Based upon the findings of this investigation, a multi-step Tech-Prep assessment model (MAGIC) is presented that promotes access to Tech-Prep and other vocational programs for special populations by incorporating formal and curriculum-based vocational assessment procedures.

Introduction

Tech-Prep is being promoted as a significant educational reform movement that reflects the occupational preparation needs of today's diverse student population in a changing economy (Hull & Parnell, 1991). Over the past decade the United States has been leaning toward a high-wage, low-skill economy, a choice which is no longer an option for the future. To counteract this trend, The Secretary's Commission on Achieving Necessary Skills (SCANS) representing educators, businesses, unions, and government was appointed by the Secretary of Labor in May, 1990. The fundamental purpose of the commission was to determine what skills our young people would need to succeed in a "high-performance economy characterized by high-skill, high-wage employment" (Secretary's Commission On Achieving Necessary Skills, 1991). The commission's primary concern was that

> more than half of our young people leave school without the skills necessary to find and hold a good job. These young people will pay a very high price. They face the bleak prospects of dead-end work interrupted only by periods of unemployment, (p. v)

In an expanded series, the Wall Street Journal (Zachary & Ortega, 1993) cites labor specialists who call this change in the economy an "Age of Angst" noting that the "four horseman of the workplace - global competition, technology, downsizing, and the growth of the contingent work force - will cause wages to continue to fall, creating a nation increasingly divided into haves and have nots." This division will not impact evenly; it is predicted that persons with special needs who are educationally and economically disadvantaged will make up an increasingly larger portion of the U.S. labor pool (National Center on Education and the Economy, 1990). As the United States rises to the challenge of developing a more productive and effective workforce, those with special needs must not be denied their inherent right of participation. Every self-sustaining adult will be needed as the United States approaches the challenges of the next century (Greer, 1991).

While all students are affected by the changing economy, the issue is more poignant for students with special needs. Post high school follow-up studies on individuals with disabilities reveal that a significant percentage are not successfully making the transition to post-secondary adult life and/or satisfactory careers (Benz & Halpern, 1987; Hasazi, Gordon, & Roe. 1985; Hasazi, Johnson, Hasazi, Gordon, & Hull, 1989). Lack of success in adult life may indicate that special populations are not being adequately prepared in the public schools.

Vocational education has long been recognized as a critical link between education and employment for students with disabilities (Sarkees & Scott, 1986; West, 1991). The findings of the National Longitudinal Transition study indicate that students in special education who participated in secondary vocational education courses were more likely to gain competitive employment than those not participating (Wagner, 1991). While the National Assessment of Vocational Education (Wirt, Muraskin, Goodwin, & Meyer, 1989) suggests that considerable strides have been made in mainstreaming students with disabilities into a variety of vocational education programs, other studies indicate that these students did not enroll in the full range of vocational options (Lombard, Hazelkorn, & Neubert, 1992; Wagner, 1991).

As Tech-Prep conceptual models emerge, it is critical that equal access and accommodations be made for populations with special needs. A survey by the National Center for Research in Vocational Education (NCRVE) identified 368 Tech-Prep programs, however, only 18 reported unique activities for special populations. If students with special needs are to acquire the knowledge and skills necessary to succesfully compete in a global economy, they must be afforded access to the full range (high tech, mid tech, and low tech) of the Tech-Prep options (Brown, Asselin, Hoerner, Daines & Clowes, 1992).

Tech-Prep, as defined in the Carl D. Perkin's Vocational and Applied Technology Education Act of 1990, is a conceptual model created to respond to the nation's educational and economic needs. It is an articulated program consisting of 2 years of secondary school preceding graduation followed by 2 years in higher education or in an apprenticeship program (P.L. 101-392).

One critical element in the Tech-Prep formula is the teaching of applied academics which can also be characterized as generalizable skills. Studies demonstrate that a number of skills in the areas of mathematics, communications, interpersonal relations, and reasoning can be generalized across many vocational programs and occupations (Greenan, 1983; Greenan & Dunham, 1986; Greenan and Powell, 1985; Greenan & Richard, 1985; Greenan & Winters, 1986). Moreover, teaching strategies have been developed which assist students with special needs to transfer skills from settings where they are learned to settings where the skills are applied (Deschler, Alley, Warner, & Schumacker, 1981; Ellis, Lenz, & Sabornie 1987a; Ellis, Lenz, & Sabornie, 1987b). These principles of generalization are fundamental to Tech-Prep programs which use carefully selected, applied academics coupled with thinking skills. The concept implies that curricular content in academic and vocational education become integrated. As a result, it is expected that the public school drop out rate can be significantly decreased if "students understand the 'why' - the application of their learning - as well as the "what" - the knowledge itself" (Parnell, 1991, p. 25). In addition to reducing the high drop out rate for students with special needs, Tech-Prep is a logical program option because it is based in part upon generalizable skills and instructional strategies proven to be effective for this population.

Tech-Prep and Perkins Assurances

In addition to providing the legislative framework for Tech-Prep, the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 outlined specific assurances for special populations. The assurances were designed to ensure that special populations would have access to the full continuum of secondary and post-secondary vocational education options. Since passage of the Perkins Act, however, vocational special needs personnel have been struggling to determine the most effective ways to implement the assurances prescribed within the law.

Although the Perkins assurances represent yet another piece in the mounting legislation promoting accessability for individuals with special needs, the degree to which these assurances will be utilized as a vehicle to promote access to Tech-Prep programs remains open to question. Kochhar and Barnes-Deschamps (1992) point out, for example, that while the assurances apply to Title II (Basic State Grant) funds, they were not intended to apply to Title III funds which support Tech-Prep programs. Tech-Prep does require, however, "the development of tech-prep education programs and services appropriate to the needs of such (special population) individuals " including "preparatory services which assist all participants in such programs" (Section 344, PL. 101-392, p. 40 - 41). This apparent ambiguity in the Act may serve at least two purposes. First, those who believe that Tech-Prep is a high track secondary to post-secondary option for the academic elite may argue that the assurances for full access apply only to vocational programs - not Tech-Prep. Others, including professionals who believe the Perkins assurances are nothing less than civil rights legislation for special populations, may seize this opportunity to articulate the notion that Tech-Prep represents educational reform which will benefit *all* students who envision post secondary technical training or employment as realistic transition outcomes.

The Perkins Regulations provide assurances that members of special populations are to receive specific services to ensure access to vocational education opportunities. These include but are not limited to the following: (1) assistance entering vocational education programs; (2) assessment of special needs of students with respect to successful completion of programs; (3) appropriate curriculum modifications; (4) appropriate instructional modifications; and (5) school to post-school transition planning (P.L. 98-524).

It can be argued that the assurances are intrinsically linked to each other (Leconte & Neubert, 1987). Vocational assessment may be viewed as the building block which supports the various supplemental services characterized in the assurances (Leconte & Boyer-Stephens, 1992). Assessment is the initial link in the service delivery process and the foundation for program planning, program placement, curriculum modifications, instructional support, and formal transition planning (Lombard & Aserlind, 1991).

If the assurances of vocational assessment and supplementary services are critical elements promoting satisfactory participation in vocational programs, it is essential to investigate the extent to which current assessment practices assist vocational special needs personnel to provide appropriate program planning and support. This was the focus of the 1992 Wisconsin invistigation.

Purpose

The purpose of this statewide study was threefold: (1) to determine the extent of formal vocational assessment practices being conducted among secondary students with special needs [including learning disabilities, mild cognitive disabilities, emotional disabilities, students at-risk, and students who have English as a second language (ESL)] ; (2) to determine the use of vocational assessment data with respect to five of the Perkins assurances for special populations including: IEP planning, program placement, curriculum modifications, instructional modifications, and transition planning; and (3) to determine the need for staff development related to vocational aptitude, occupational interest, and learning style assessment practices.

Method

Procedures

One hundred (20%) of Wisconsin's public secondary (grades 9-12) schools were randomly selected from a State Department of Education computer list to participate in this study. Prior to survey administration, a special education teacher from each school was contacted by phone. During this initial telephone contact, the teacher was asked to facilitate the completion of the entire survey by gathering data from other special education teachers, at risk coordinators, and ESL instructors. The local contact person was then mailed a copy of the survey with a return self-addressed, stamped envelope and a cover page which detailed the overall intent of the study and a list of instructions.

Approximately six weeks after the initial mailing, follow-up telephone calls were made to local contacts who had not returned the survey. They were requested to complete and return the survey or the data were collected over the telephone. Of the 100 surveys originally disseminated in conjunction with this study, seventy were fully completed which represents a 70% return rate. These 70 sites represent 14% of the public secondary schools in Wisconsin.

Subjects

Of the 70 secondary schools that participated in this investigation, 68 reported learning disabilities programs, 53 reported programs for students with emotional disabilities and 44 indicated MCD programs. Forty-seven secondary schools reported having formal at-risk programs in place while just 8 of the 70 respondents housed formal programs to serve students with English as a second language (ESL). Due to the low incidence of ESL programs represented in the sample, data collected with respect to this population will not be presented.

Instrument

A survey instrument was designed by the coauthors of this study. In order to evaluate the language and overall format of the survey questionaire, two separate pilots were conducted. The initial pilot was conducted with graduate students attending the University of Wisconsin-Whitewater enrolled in the Transitional/Special Needs Training Program. A second pilot involved a sample of secondary special education teachers in southern Wisconsin. After feedback was solicited from both groups and revisions were made to the survey instrument, it was disseminated in conjunction with this investigation.

The survey instrument was divided into two sections. The first section pertained to demographic information regarding current programs for special populations and related enrollment figures. Enrollment totals for each of the subgroups were indicated according to special population category and gender. All demographic data reflected programs and enrollment figures during Spring of 1992.

The second section of the survey consisted of the following categories: type(s) of psychometric vocational assessment instruments routinely administered by vocational special needs personnel (e.g., occupational interest, vocational aptitude, learning style); information pertaining to grade level(s) when psychometric assessment data were routinely collected; information regarding the use of formal assessment data to accomodate the Perkins assurances (e.g., I.E.P planning, program placement, curriculum modifications, instructional adaptations, transition planning); and respondents self rating on the need for staff development on vocational assessment topics.

Results

Administration of Vocational Assessment Instruments

Survey respondents were asked to indicate the extent of their administration of three types of formal vocational assessment instruments. Table 1 represents the range of routine administration of formal occupational interest, vocational aptitude, and learning style assessments to populations with special needs in grades 9 - 12.

Table 1

Extent of Psychometric Vocational Assessments Routinely Administered to Populations with Special Needs

TYPE OF ASSESSMENT	PERCENT OF ROUTINE USE			
	LD	ED	MCD	AT RISK
OCCUPATIONAL INTEREST	76	62	70	72
VOCATIONAL APTITUDE	66	53	73	62
LEARNING STYLE	62	40	60	40

Overall, assessments of occupational interest occurred more frequently than vocational aptitude or learning syle. Of the four student subgroups, assessment of occupational interest was highest for students with learning disabilities (76%) and lowest for students with emotional disabilites (62%). Just over half of students with emotional disabilities (53%) received an assessment of vocational aptitude compared to their peers with mild cognitive disabilities at 73%. Learning style assessments were administered less frequently than occupational interest or vocational aptitude across all four subgroups. While 62% of the LD subgroup and 60% of the MCD subgroup received routine learning style assessment, only 40% of the ED and at-risk populations in the sample received assessment of learning style preferences. Students with learning disabilites tend to receive the highest percentage of formal vocational assessment services while students with emotional disabilites appear to be assessed at a lower rate than the other three subgroups.

Use of Assessment Data to Implement Perkins Assurances

Respondents were asked to indicate the extent to which they used results from formal vocational assessments to carry out activities related to five of the Perkins assurances. The five assurances are as follows: (1) develop IEP vocational goals and objectives; (2) provide access and placement into vocational programs; (3) develop post-secondary transition plans; (4) provide supplementary services that include modifying curriculum content and; (5) modify instructional methods. (Table 2 illustrates the application of assessment data to these assurances).

Table 2

Use of Vocational Assessment Data by Population and Assurance

TYPE OF ASSURANCE	PERCENT OF USE			
	LD	ED	MCD	AT RISK
DEVELOP IEP GOALS & OBJECTIVES	80	90	87	37
PLACEMENT INTO PROGRAMS	88	90	84	83
DEVELOPMENT OF TRANSITION PLAN	90	92	89	77
MODIFY CURRICULUM CONTENT	43	53	60	31
MODIFY INSTRUCTIONAL METHODS	50	53	60	37

Note: Percentages reflect use of data among those that routinely conduct vocational assessments

Differences were noted in the use of formal assessment data by vocational special needs personnel to meet the Perkins assurances. Respondents reported that formal assesement information was of greater assistance in the delivery of three services (e.g., IEP planning, program placement, and transition planning) than it was in modifying curriculum or modifying instructional methods. The use of assessment results for developing IEP goals and objectives ranged from a high of 90% for the ED subgroup to 87% for MCD and 80% for LD. Wisconsin law does not require written goals and objectives for students at-risk which may contribute to the low percentage of use (37%) as compared to other populations. Over 80% of respondents who routinely conduct vocational assessment reported using the information for purposes of vocational or academic program placement. The use of assessment data for this purpose ranged from 83% for the at-risk subgroup to 90% for emotional disabilities.

Few differences were found between three subgroups with respect to post-secondary transition planning. The ED, LD, and MCD subgroups used assessment data at a rate of 92%, 90%, and 89% respectively. Seventy-seven per cent of respondents from at-risk programs found formal assessment data useful in developing post-secondary transition plans.

Overall, respondents did not use assesement data for curriculum or instructional modifications at a rate comparable to the assurances described above. The extent of use for curriculum modifications ranged from a low of 31% for at-risk programs to 60% for the MCD subgroup. The ED and LD subgroups both reported a use rate below 50% for curriculum modifications. A similar trend was noted for instructional modifications. The use rate ranged from 37% for at-risk programs to 60% for MCD. Fifty-three percent of the ED and 50% of LD program respondants reported using formal assessment information to modify instruction.

Participants were asked to rank the need for local staff development in vocational assessment topics as high, medium, or low. Assessment topics included occupational interest, vocational aptitude, and learning styles. Table 3 depicts the need for local staff development in vocational assessment topics.

Table 3

Staff Development Needs Regarding Vocational Assessment Topics

ASSESSMENT TOPIC	PERCENT OF NEED		
	High	Medium	Low
OCCUPATIONAL INTEREST	49	33	10
VOCATIONAL APTITUDE	51	35	6
LEARNING STYLE	57	28	16

In general, respondents indicated a high need for staff development in all three categories of assessment. The need for staff development on the topic of learning styles, however, was ranked higher than vocational aptitude and occupational interest. Vocational special needs personnel ranked their need for staff development on vocational aptitude and occupational interest assessments about equal.

Discussion

The purpose of this study was to determine the degree to which formal vocational assessments were being administered and utilized in accordance with the Perkins assurances within secondary special needs programs in Wisconsin.

The majority of students with special needs in this study routinely received formal vocational assessment services. Just over three quarters (77%) of students had their occupational interests assessed while 63% of the total sample received an assessment of their vocational aptitude. Fifty-nine per cent of the students received formal assessment of learning style preferences. These data reveal an overall increase of vocational assessment activity in Wisconsin Schools during the past four years. Lombard, Hazelkorn, and Neubert (1992) found that during the 1987-88 academic year, only 37% of secondary students with mild disabilities received any formal or informal vocational assessment services. The increase in secondary vocational assessment services may be explained in part by the Wisconsin Department of Public Instruction's interpretation of the Individuals with Disabilities Education Act (IDEA) of 1990 (P.L. 101-476) that transition goal setting on IEPs must be an outcome associated with functional vocational assessment (Wisconsin Department of Public Instruction, 1993). Moreover, Wisconsin's Designated Vocational Instruction (DVI) Model, which is a collaborative mainstreaming approach between special and vocational educators, promotes the notion that placement into vocational or Tech-Prep programs must be done *after* formal and informal vocational assessment results have been examined.

Examining the extent to which formal psychometic vocational assessment approaches assist vocational special needs personnel implement the Perkins assurances was central to this study. Interestingly, respondents reported that formal assessment data is of greater use with respect to three of the five assurances under discussion. Overall, more than 85% of vocational special needs personnel used formal assessment information to develop goals and objectives on IEPs, place students into programs, and conduct formal transition planning. Only about half of the educators in the sample, however, reported using formal data to modify the curriculum or to modify instructional methods.

The assurances of curriculum modification and instructional support cannot be met without the availability of additional information. If the assurances of vocational assessment and supplemental services such as curriculum modifications and instructional modifications are to be intrinsically linked as some believe (Leconte & Boyer-Stevens, 1992), then vocational special needs personnel must do more than administer formal assessment instruments.

The remainder of this article discusses an assessment model which addresses the role and function of formal and informal (curriculum-based) vocational assessment approaches. The utilization of this assessment model as a vehicle to ensure access, participation, and completion of Tech-Prep programs for special populations will also be presented.

Figure 1

TECH PREP ASSESSMENT MODEL

M

Make a Prediction for Student's Future

- Gather informal student data
  - Needs
  - Preferences
  - Interests
- Gather formal student data
  - Occupational Interest
  - Vocational Aptitude
  - Academic Skills
  - Learning Style
- Map Vocational Congruence

A

Assess Entry Level Skills

- Implement CBVA
- Conduct Tech Prep Program Inventory
  - Entry Level Skills
  - Applied Academics
  - Vocational Competencies
- Determine Learner Outcomes

G

Guide Skill Acquisition to Skill Mastery

- Coordinate Discrepancy Analysis
- Identify Goals and Objectives
  - Prioritize Needs
- Instructional Support
  - Direct
  - Indirect

I

Instruct for Generalization

- Skill Rehearsal
- Orientation to Applied Setting
- Activate Skills in Multiple Settings

C

Conduct Maintenance Checks

- On-going Assessment
  - Monitor Student Performance
- Modifications
  - Curricular
  - Instructional
- Evaluations
  - Student
  - Program

Tech-Prep Assessment Model

There are five critical procedures in the Tech-Prep vocational assessment model (Figure 1) which was designed by the first author of this study (Lombard & Larson, 1992). The model consists of the following steps: (1) making a tentative prediction regarding a students Tech-Prep program of study; (2) assessing the entry level skills and learner outcomes associated with the predicted program of study; (3) guiding the students acquisition of discrepant entry level skills and learner outcomes; (4) instructing the student to generalize essential skills; and (5) conducting maintenance checks to monitor student performance within Tech-Prep programs.

1: *Predicting a Tech-Prep Program of Study*

Making tentative predictions regarding a students' Tech-Prep program of study is no easy matter. The decision will be even more difficult if little is known about the individuals' interests, aptitudes, and learning style preferences. While formal vocational assessment instruments are limited in terms of scope and function, they can provide a snapshot of a students' interest in relationship to his/her academic and vocational ability. Mapping the relationship or congruence between interest and ability will enable the student to identify Tech-Prep options that are consistent with their current interest and ability levels. When using formal psychometric tools however, extreme caution is needed to ensure that instruments are appropriate for school aged youth and special populations. Additional assessment of a students' interest and abilities is also warranted following initial Tech-Prep placement. On-going assessment will enable the student and support personnel to cooperatively make decisions regarding alternative Tech-Prep options when needed. Although formal assessment approaches can be useful in making tentative predictions, they were not designed to address the unique curricular and instructional needs of special populations as they enter and progress through Tech-Prep programs; a concept supported by the 1992 Wisconsin study. These concerns can often be addressed by implementing curriculum-based vocational assessment (CBVA) procedures.

2: *Asessment of Entry Level Skills and Learner Outcomes*

After a tentative Tech-Prep option has been predicted, vocational special needs personnel can begin curriculum-based vocational assessment procedures to determine the type and extent of curricular and instructional modifications required. Modifications of this type cannot be made until specific programmatic questions have been answered. Vocational special neeeds personnel must know the essential entry level academic and vocational skills required in the program, how applied academic content will be taught and evaluated, and learner outcomes associated with the program and their relationship to post-secondary training and employment options. Student progress toward learner outcomes must also be monitored to ensure that curricular and instructional modifications are made as needed. By using a Tech-Prep Program Inventory, vocational special needs personnel can collaborate with Tech-Prep instructors to answer critical questions about the curricular and instructional aspects of the program.

3: *Guide Student Acquisition of Discrepant Skills*

After formal assessment information has been collected and a Tech-Prep Program Inventory is completed, vocational special needs personnel can conduct a discrepancy analysis between the students current skill base and the entry level skills, applied academic skills, and learner outcomes associated with the predicted Tech-Prep option. Once discrepant skills are identifed, vocational special needs personnel can assist students acquire the most essential competencies by characterizing them as short and long term goals on IEPs and by prioritizing instructional time and effort to accommodate skill development prior to actual program placement.

4: *Instruct Student on Generalization Strategies*

Assessing and prioritizing critical skills will have little value for students with special needs unless these skills can be transferred from one environment to another. Although the emphasis on *applied academics* within Tech-Prep programs may enhance the generalizability of skills from the classroom to the workplace, additional efforts must be made by vocational special needs personnel to ensure that students are equipped with a pool of behaviors to transfer skills from settings where skills are acquired to environments where skills are applied. Some examples of instructional approaches which may promote skill generalization include the following:

*use teaching examples that do not contain irrelevant information
*use instructional examples that teach the learner what inhibits and promotes generalization
*sequence the teaching examples to ensure that the strategy being taught is learned before moving on to the next example
*use prompt sequences and reinforcment strategies to assist the learner generalize behavior from one setting to another
*use intructional examples found in generalized settings
*orient students to settings and environments where generalized skills can be applied
*encourage students to activate skills in multiple settings
(Ellis, Lenz, & Sabornie, 1987a)

5: *Conduct Maintenance Checks Following Program Placement*

After students have been placed in Tech-Prep courses, vocational special needs personnel must collaborate with Tech-Prep instructors to monitor generalized student behavior and general progress toward exit level outcomes. During this phase, support staff also monitor the need for additional curriculum modifications and/or instructional accommodations. By providing ongoing instructional support throughout program enrollment, support personnel will ensure that students with special needs not only have full accees to Tech-Prep options, but will be provided every opportunity to receive the support necessary to successfully complete their program of choice.

Conclusion

As a conceptual model, the Tech-Prep intitiative holds much promise for preparing America's workforce for the next century. But, the battle to ensure full access for special populations must be fought on ethical, moral, educational, and legal grounds. Vocational special needs personnel can help promote accessability by articulating the need to apply Perkins assurances to state and local Tech-Prep designs. One fundamental goal of these assurances cannot be overstated: In order for individuals with special needs to access, participate, and successfully complete a Tech-Prep or vocational program, they must receive an assessment which captures their interests and abilities. Program options must also be assessed in order to determine the need for curricular and/or instructional modifications.

The degree to which special populations fully participate in Tech-Prep programs may ultimately depend upon the willingness of vocational special needs personnel to implement effective practices. Formal and curriculum-based vocational assessment must be linked to program planning, placement, and the provision of instructional support services. If these linkages are established within the context of Tech-Prep, special populations will not only have access to programs, they may also be better prepared to join the workforce of the 21st century.

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E. Youth Employment and Wisconsin's Child Labor Laws

Employment during the school week has become a fact of life for many American youth. In the United States, the only major industrialized nation in the world that encourages student employment among college-bound youth, more than two-thirds of high school juniors and seniors and about one-half of sophomores hold jobs during the school year. Problems can arise when students value the short-term goal of earning and spending money over the long-term goal of investing in educational activities that will contribute to their development as skilled workers and productive citizens.

- Teenagers who work more than 15 to 20 hours per week are at risk for problems in school, more likely to use drugs and alcohol, and more likely to get into trouble with the law.
- Most student workers are from middle-class - not disadvantaged - backgrounds and use their earnings to buy clothes, cars, stereo equipment, and alcohol and drugs rather than saving for future education.

The State Superintendent's Task Force on Youth Employment (1990) found that while students are spending more time working and less time studying, school reform efforts are creating more classroom demands that require more, not less, time for homework and studying. The task force also reported that employers bemoan the lack of skills and knowledge among recent high school graduates, yet because of labor shortages, continue to hire teenagers at unprecedented rates.

As a result of this study and other school-to-work transition efforts, a broad-based group of educators, business and industry people, and parents sought revisions in child labor laws to reflect educational preparation as a priority for all Wisconsin youth. Changes in the laws were designed to allow students adequate time for homework and other school studies as well as rest, recreation, and extracurricular activities. The Department of Industry, Labor, and Human Relations' (DILHR) administrative rule changes and child labor law revisions went into effect January 1, 1992, but were subsequently eased in May of 1995. The Department of Industry, Labor and Human Relations has the authority to regulate all employment, places of employment, and to enforce laws relating to child labor and school attendance which are designed to protect the life, health, safety and welfare of employees and others.

Be aware that federal law for the employment of 14 and 15 years olds is more stringent than Wisconsin law and therefore takes precedence. See page 107 and Appendix B for Employment Standards for 14 and 15 years olds.

Child Labor and Street Trades Employment Information

Hours and Time of Day Minors May Work Effective May 1, 1995

MAXIMUM HOURS OF WORK	12 - 13[1] year olds	14 - 15 year olds	16 -17 year olds
Daily:			
School Days: Except Last School Day of the Week	4 hours	4 hours	5 hours[4, 5]
Last School Day of the Week and Non-School Day	8 hours	8 hours	8 hours[4, 5]
Day During Non-School Week	8 hours	8 hours	Unlimited[2, 4, 5]
Weekly:			
School Week	18 hours	18 hours	26 hours[5]
School Week less than 5 Days	24 hours	24 hours	32 hours[5]
Non-School Week	40 hours	40 hours	50 hours
PERMITTED TIME OF DAY			
School Day	7am - 8pm	7am - 8pm	7am - 11pm[4, 5]
Last School Day of the School Week	7am - 9:30pm	7am - 11pm	7am - 12:30am[4, 5]
Non-School Day Preceding School Day	7am - 8pm	7am - 8pm	5am - 11pm[4, 5]
Non-School Day Preceding Non-School Day	7am - 9:30pm	7am - 11pm	5am - 12:30am[4, 5]
Day During Non-School Week	7am - 9:30pm	7am - 11pm	Unlimited[3, 4, 5]
Newspaper Delivery:			
Day Preceding School Day	5am - 8pm	5am - 8pm	5am - 9pm
Day not Preceding School Day	5am - 9pm	5am - 9pm	5am - 11pm
Street Trades:			
Day Preceding School Day	7am - 8pm	7am - 8pm	6am - 9pm
Day not Preceding School Day	7am - 9pm	7am - 9pm	6am - 11pm
MAXIMUM DAYS PER WEEK			
Newspaper Delivery	7 days	7 days	7 days
Other Work	6 days	6 days	6 days

1. Ages 12-13 years may be employed **only**: as caddies, in agriculture, domestic service, street trades, school lunch programs, or for a parent/guardian who owns the business.
2. Ages 16-17 must be paid time and one-half for work in excess of 10 hours per day or 40 hours per week, which ever is greater. Minors 14 - 17 working in agriculture, must be paid time and one-half for work over 50 hours per week during peak periods.
3. Following the end of work, 8 hours of rest is required before the start of work the next day. Work must be directly supervised by an adult between the hours of 12:30 am - 5am.
4. Minors age 16 and 17 who are Emancipated, Living Independently, Head of Household, Enrolled in a GED Program at a Vocational or Technical College, may work 40 hours per week when public schools are in session and up to 50 hours per week during non school weeks. The daily hours and time of day restrictions do not apply.
5. Minors age 16 and 17 who are enrolled in Home School may only work 26 hours per week when public schools are in session and 32 hours if less than 5 days of school and up to 50 hours per week during non school weeks. The daily hours and time of day restrictions do not apply.

ADDITIONAL INFORMATION

- Minors are limited to the maximum hours and time of day restrictions even though they may work for more than one employer during the same day and/or week.
- All minors must have 1/2 hour meal period after 6 consecutive hours of work.
- Before a minor under 18 years is permitted to work, a work permit must be on file with each employer except those in agriculture and domestic service.
- If a minor pays the $5.00 fee to the permit officer for the work permit, the employer must reimburse the minor not later than the first pay check.
- Generally, employment is considered too hazardous for minors because of particular equipment or the occupation is prohibited, not the establishment.
- See IND 70.12 for the modified times of day and hours for work in canning and freezing establishment.
- Employers subject to both federal and state laws must comply with the most stringent of the provisions. For federal law information contact: US Dept of Labor, Wage and Hour Office, 212 E. Washington Ave. Madison, WI 53703, 608/264-5221.

DILHR

The Department of Industry, Labor and Human Relations does not discriminate on the basis of disability in the provision of services or employment. If you need this printed material interpreted or in a different form, or if you need assistance in using this service, please contact us. For further information about child labor or street trades law contact:

Equal Rights Division
P.O. Box 8928
Madison, WI 53708
Telephone (608) 266-6860
TDD (Hearing Impaired) (608) 264-8752

Equal Rights Division
819 N 6th Street
Milwaukee, WI 53203
Telephone (414) 227-4384
TDD (Hearing Impaired) (414) 227-4081

ERD-9212-P (R 6/95)

IND 70.12, requires that all employers except in agriculture and domestic service, display a copy of this poster in the workplace where minors are permitted to work.

1. Youth Service

While not a true "work experience" program, youth service and volunteer experiences can provide valuable vocational awareness and exploration situations for students if properly designed. These experiences are also circumscribed by state and federal laws to insure students are not exploited.

- **Volunteer Services (hours, time of day, and activities limited by WI child labor regulations - no longer than 13 weeks)**

  a. Only for nonprofit educational, charitable, religious or community service organizations.
  b. Organization must have written consent of student's parents.
  c. Student must be supervised by a responsible adult.
  d. Student must have orientation training and supervision to make services a genuine learning experience.
  e. The organization using the student volunteer will provide insurance to cover the student when contributing service to the organization.
  f. Liability coverage will be provided to protect the student in the case of an accident to a third party.
  g. Students will not be economically exploited nor used to replace paid employees. (Ind 70.08)

2. Penalties

Any employer who employs a minor in excess of the maximum hours of labor, or in violation of the time of day restrictions, is required to pay each minor double the regulation rate of pay for all hours worked in violation each day or each week, whichever is greater. This penalty is in addition to wages already paid and any other statutory penalties of $25.00 to $1000.00 which may be assessed for each day for the first offense and $250.00 to $5000.00 for each day for the second offense. (ss. 103.82 Wis. Stats.)

An employer may be fined for each violation of the Wisconsin Child Labor Law. Each day a violation occurs may be counted as a separate violation. Any parent who permits his or her child to be employed in violation of the Wisconsin Child Labor Law may also be fined for each violation.

3. Legal Employment Areas Permitted to Minors

The following chart lists the type of work by age level at which minors can legally be employed (DILHR, 1988)

Work	12 and up	14 and up	16 and up
Agriculture	x	x	x
Airports		x	x
Amusement Centers		x	x
Arenas		x	x
Auditoriums		x	x
Bakeries		x	x
Ball parks		x	x
Billiard halls		x	x
Bowling alleys		x	x
Building trades			x
Caddies	x	x	x
Camps		x	x
Canning factories			x
Car washes		x	x
Casual employment at homes	x	x	x
Clubhouses		x	x
Coliseums		x	x
Construction			x
Drive-ins		x	x
Factories			x
Feed Mills		x	x
Fur farm	x	x	x
Garages		x	x
Gas stations		x	x
Greenhouses		x	x
Grocery stores		x	x
Gun Clubs		x	x
Hospitals (no personal patient care)		x	x
Hotels		x	x
Karting tracks		x	x
Laundries		x	x
Lifeguards			x
Mercantile establishments		x	x
Motels		x	x
Newspapers carriers	x	x	x

Work	12 and up	14 and up	16 and up
Nursing homes (no personal patient care)		x	x
Parents' business	x	x	x
Poolrooms		x	x
Private clubs		x	x
Offices (administration)		x	x
Resorts		x	x
Restaurants		x	x
Retail stores (cashiering, selling, etc.)		x	x
Roller rinks		x	x
Schools		x	x
School lunch programs		x	x
Stadiums		x	x
Street trades (selling magazines, newspapers, etc. door-to-door)	x	x	x
Supermarkets		x	x
Swimming instructor aides			x
Tree trimming		x	x
Warehouses			x

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F. A Survey of Accessibility to Secondary Vocational Education Programs and Transition Services for Students with Disabilities in Wisconsin

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INTRODUCTION

Throughout the 1970's and 1980's there were prominent legislative mandates to increase access to quality education, vocational training, and employment opportunities for individuals with disabilities. In particular, vocational education has long been recognized as a viable option for enhancing the employability of individuals with disabilities. Recent findings from the National Longitudinal Transition of Special Students indicated that students who participated in secondary vocational education were more likely to be competitively employed than youths who did not take vocational education courses (Wagner, 1991). Similar results have been reported in other post-school follow-up studies (Benz & Halpern, 1987; Hasazi, Gordon, & Roe, 1985; Hasazi, Johnson, Hasazi, Gordon, & Hull, 1989). Since access to appropriate vocational education opportunities enhances employment outcomes for individuals with disabilities, it deserves increased attention by educators, support personnel, and parents early in students' career, vocational and transition planning processes.

A pressing issue in vocational education revolves around access and equity issues for individuals with disabilities. The Carl D. Perkins Vocational Education Act of 1984, P.L. 98-524, outlined specific assurances that students with disabilities be provided access to a full range of vocational education programs in least restrictive environments. Studies conducted prior to P.L. 98-524 provided some evidence that students with disabilities were often limited in their pursuit of a full spectrum of vocational education programs (cf., Cobb, 1983; Repetto, 1986; Rockwell, Weinstein, & LaRoque, 1986; Valentine, 1985). A recent report published by the National Assessment of Vocational Education (NAVE), however, suggests strides have been made in mainstreaming male students with disabilities into a variety of vocational education programs (Wirt, Muraskin, Goodwin, & Meyer, 1989). Females with disabilities continue to be placed in low level service courses or consumer and homemaking courses. Otherwise, students with disabilities take the same or more credits in occupationally specific vocational education and cooperative work-study programs when compared to other students (Wirt et al., 1989). Unfortunately, other than the NAVE report, there is little research documenting the progress made in mainstreaming students with disabilities in vocational education programs or of the availability of related services such as vocational assessment, support and transition services in local or state education agencies. Accessibility and equity continue to be prominent themes in the Carl D. Perkins Vocational Education and Applied Technology Act of 1990, P.L. 101-392.

Access to vocational education programs is only part of the issue regarding appropriate vocational and transition planning for students with disabilities. Students are to be provided with assessment activities that identify their vocational interests, abilities and special needs. These activities should be related to students completing vocational education programs, and individual planning activities that foster cooperative planning between special and vocational educators, and transition services designed to facilitate the school to work transition process. Students must be provided with these services to ensure they have access to appropriate vocational programs, complete the required training, and are placed in a chosen field of employment. Again, there is limited empirical evidence to suggest that these services are being provided to students with disabilities under the Perkins Act.

The purpose of this study was to determine the availability of vocational education programs to secondary students with disabilities in Wisconsin and the extent of accessibility. In addition, students' access to vocational assessment services and the inclusion of vocational and post-school transition goals on IEPs were examined to further assess the impact of the student assurances outlined in the 1984 Perkins Act.

METHOD

Sample

One hundred of Wisconsin's 502 secondary schools were randomly selected to participate in this study as part of the Comprehensive Study in Personnel Development (CSPD) (WHNAP, 1990). The Wisconsin Department of Public Instruction provided the funding for this investigation to determine the accessibility of vocational programs and related services provided to secondary students with mild disabilities throughout the state during the 1987–88 academic year.

A list of district directors of special education was obtained through a Wisconsin Department of Public Instruction Administrative Directory. During the fall of 1989 and prior to receiving the survey, directors of special education were contacted by telephone to discuss the purpose of the study and to determine their willingness to complete the survey in cooperation with school personnel. During the initial telephone contact, survey completion strategies were outlined, including the need to examine school records. The director of special education, who was responsible for completing the survey, was then mailed a copy of the survey with a return self-addressed stamped envelope.

Approximately 10 weeks after the initial mailing, follow-up telephone calls were made to the special education directors who had not returned the survey. They were requested to complete and return the survey or it was completed via the telephone. Sixty-seven (67%) of the directors completed the survey instrument, however, six of the surveys had to be discarded due to incomplete data. The remaining 61 sites represented just over 12% of the public secondary schools in the State of Wisconsin.

The responding schools reported a total enrollment of 30,192 secondary students at the time of the investigation. Of this number, 2,213 or 7% were classified as having a mild disability. For the students with mild disabilities, 1,342 (61%) were classified as having learning disabilities, 579 (26%) had emotional disturbances, and a total of 292 (13%) were classified as having mild mental retardation according to Wisconsin DPI criteria. Of the students with learning disabilities, 940 (70%) were males and 402 (30%) were females. Within the population of students with emotional disturbances, 449 (78%) were males while 130 (22%) were females and the total sample of students with mild mental retardation consisted of 152 (52%) males and 140 (48%) females.

Instrument

A survey instrument was designed by the first author of the study. The instrument was piloted with a sample of graduate students attending the University of Wisconsin at Whitewater. Each of the graduate students who participated in the pilot held licensure in an area of special education and were familiar with the language and overall content of the survey. In addition, representatives from the Wisconsin (CSPD) research team evaluated the survey instrument to ensure item clarity and overall consistency with respect to language, content, and format. The survey was subsequently refined prior to being disseminated in conjunction with this study.

The instrument consisted of 16 major items which were separated into two sections. The first section requested data regarding high school enrollment of students classified as having learning disabilities, mild mental retardation, or emotional disturbances. Vocational course offerings related to each of the six occupational clusters were also identified in the first section of the survey instrument.

The second section of the survey determined the accessibility of vocational courses and related school services to students with mild disabilities. The survey was formatted to allow the investigators to look at availability, accessibility, planning, and service differences not only according to disability classification, but according to gender as well. Respondents of the survey were requested to examine vocational program enrollment records and student IEPs to complete specific items on the survey. For other items, respondents were requested to consult with guidance personnel, special education teachers, vocational education teachers, and others who were directly involved in the delivery of related services being investigated in this study.

RESULTS

Results of the survey are presented in the following sequence: (a) availability of coursework related to occupational clusters, (b) enrollment of students with disabilities in occupational clusters, (c) participation in vocational assessment activities, and (d) inclusion of vocational and post-school transition goals on IEPs.

Availability of Occupational Clusters

Secondary schools in Wisconsin typically provide vocational education coursework in six occupational clusters: (a) Technology Education, (b) Family and Consumer Education, (c) Agriculture, (d) Business Education, (e) Marketing, and (f) Health Occupations. While the majority of moderate to large schools offer coursework in each of the six clusters, many of Wisconsin's smaller schools offer related coursework in only four or five clusters.

All of the schools surveyed provided coursework within the Business Education cluster while only 28% provided coursework in the Marketing Education cluster. Ninety-three percent of schools reported course offerings within the Technology Education and Family and Consumer Education clusters, while 65% provided courses related to Agriculture. Thirty-one percent of the schools reported course offerings related to the Health Occupations cluster.

Enrollment in Occupational Clusters for Students with Mild Disabilities

As a group, 92% of the students surveyed were enrolled in at least one vocational course during the 1987–88 academic year. Students with disabilities were enrolled most frequently in the Technology Education (40%) and Family and Consumer Education (28%) clusters (see Table 1). Students were least likely to be enrolled in Health Occupations (3%) or Marketing (less than 1%). Overall, males were more likely than females to enroll in Technology Education (36% vs 4%) and Agriculture Education (10% vs 1%). However, males were enrolled more evenly in Family and Consumer Education (14% vs 14%) and Business Education (9% vs 8%) clusters when compared to females.

Enrollment in the occupational clusters was also examined with respect to gender and disability classification (see Table 2). Across all three disability classifications, males participated in Technology Education and Agriculture clusters at a much greater rate than did females. Few other enrollment differences were noted between the learning disabled and emotionally disturbed subgroups. However, males with mild mental retardation participated in the Family and Consumer Education, Business Education, Health Occupations, and Marketing Education cluster at a much lower rate than did males with learning disabilities or emotional disturbances.

Vocational Assessment

Survey respondents indicated that 826 (37%) of the 2213 students with mild disabilities received in-school formal and/or informal vocational assessment services during the 1987–88 academic year. Informal vocational assessment was defined as curriculum based procedures, such as student interviews, that were not dependent upon the utilization of

Table 1

Enrollment of Students with Mild Disabilities in Occupational Clusters During the 1987–88 School Year

Occupational Cluster	Total Percentage	Percent Male	Percent Female
Technology Education	40	36	4
Family & Consumer Education	28	14	14
Business Education	17	9	8
Agriculture	11	10	1
Health Occupations	3	2	1
Marketing	<1	<1	<1

Table 1 does not reflect the 8% of students who were not enrolled in an occupational cluster. Percents are rounded off.

Table 2

Enrollment in Occupational Cluster by Gender and Disability during the 1987–88 School Year

		Learning Disabilities		Emotionally Disturbances		Mental Retardation	
Occupational Cluster	Total	Male	Female	Male	Female	Male	Female
Technology Education	825	505	49	182	9	73	7
Family & Consumer Education	580	160	167	80	53	47	73
Business Education	354	117	101	47	33	21	35
Agriculture	230	130	12	35	1	42	10
Health Occupations	62	22	11	12	4	4	9
Marketing Education	18	6	6	4	1	0	1

standardized psychometric instruments. Formal vocational assessment was defined as data collection which did include the use of occupational interest, vocational aptitude, and standardized learning style instruments. Table 3 depicts the students who participated in vocational assessment activities by grade level and type of disability.

Overall, students with mild mental retardation received vocational assessment services more frequently than did students with learning disabilities or emotional disturbances. Nearly half (49%) of the students with mild mental retardation received vocational assessment services during the 1987–88 academic year. Thirty-seven percent of the students with learning disabilities participated in vocational assessment activities compared to 30% of students with emotional disturbances.

Differences were noted as to when students participated in vocational assessment activities. Students labeled as mildly mentally retarded (40%)

Table 3

Students Reported to Receive Vocational Assessment Services by Grade Level and Type of Disability

	LD		ED		Mild MR	
Grade Level	N	%	N	%	N	%
Freshman	112	(22)	33	(19)	30	(18)
Sophomore	120	(24)	64	(36)	31	(21)
Junior	134	(26)	48	(27)	26	(21)
Senior	139	(28)	31	(18)	58	(40)
Total	505		176		145	

Note: 826 students were reported to receive vocational assessment services and are depicted in this table.

were most likely to participate in vocational assessment activities during their senior year of high school. Students with emotional disturbances, however, were reported to receive vocational assessment services with the greatest frequency during their sophomore and junior years of high school. Students with learning disabilities received vocational assessment services throughout the 9th through 12th grades; however, 28% did participate in these activities during their senior year.

Inclusion of Vocational and Post-school Transition Goals on IEPs

Respondents were asked to identify the number of students who had vocational goals and/or post-school transition goals listed on their IEPs. It should be noted that the request for vocational goals was not specifically related to placement in any one of the specific occupational cluster areas; therefore a vocational goal could have been related to any of the six occupational clusters.

Of the total sample, 1062 (48%) students were reported to have vocational goals listed on their IEPs. Students with mild mental retardation were more likely to have vocational goals and transition goals identified on their IEPs compared to students with learning disabilities or emotional disturbances. Only 400 (18%) of the sample, however, had post-school transition goals identified. Table 4 depicts the number of students with these goals by type of disability.

DISCUSSION

The purpose of this study was to determine the types of vocational programs and services students with mild disabilities were using through a random sample of secondary vocational education programs in Wisconsin. The results of such a survey can provide administrators and educators with a benchmark for examining issues related to accessibility

Table 4

Students with Vocational Goals and Post-school Transition Goals on IEPs

	Vocational Goals		Post-school Goals	
Disability	N	%	N	%
LD	622	(46)	239	(18)
ED	265	(46)	101	(17)
Mild MR	175	(60)	60	(21)

Note: **1062 students had vocational goals and 400 had post-school transition goals and are depicted in this table.**

and equity for students with disabilities. The results are discussed in terms of meeting the student assurances outlined in the 1990 amendments to the Perkins Act and identifying future areas for research.

Students with disabilities in this study did not use a full range of vocational programs. Also, differences were evident among the types of courses taken by males and females. Within the six occupational areas available to students, the majority of males were enrolled in Technology Education courses while the majority of females were enrolled in Family and Consumer Economics courses. Few students were enrolled in the Health Occupations or Marketing clusters. While it can be argued that student enrollment was not examined according to students' interest and ability to access specific vocational programs, these data do not support the NAVE findings that students with disabilities are using a broad range of vocational programs (Wirt et al., 1989).

Enrollment patterns by gender do support the NAVE findings that females continue to be placed in consumer courses. Since the Perkins Act of 1984 and the 1990 amendments stress the importance of full access and placement in nontraditional programs, educators and parents need to promote vocational education programs and provide career opportunities at an early age for females through exploratory experiences and career education activities. Improving students' access to a broad range of vocational education programs might also be helped by providing increased support services to students with disabilities who enroll in courses such as Health Occupations and Marketing (Adami & Neubert, 1991; Lombard, 1988; Hazelkorn & Lombard, 1991).

It was surprising that only 37% of all the students had participated in formal or informal vocational assessment activities. Despite the fact that the 1984 Perkins Act clearly mandated that assessment activities should occur prior to students' placement in a vocational education program, 38% of all students participating in assessment activities did so in their senior year. Students with learning disabilities were just as likely to receive assessment services in the 9th grade as they were in the 12th grade. Students with mild mental retardation were much more likely to be assessed in their senior year. The 1990 amendments to the Perkins Act continue to include assurances that students' special needs be assessed with respect to their successful completion of vocational education programs; personnel clearly need to examine when assessment services are made available to students. If students are to receive on-going assessment services, then assessment data collected during the initial secondary years must be used to make placement decisions and instructional modifications. Assessment data collected in students' senior year should help staff facilitate planning for post-school transition goals.

Additional research is needed to determine the actual uses of vocational assessment in providing comprehensive services to students in vocational education.

The inclusion of vocational goals on IEPs for students enrolled in vocational education is an issue often related to assessment data. Nearly half of all the students were reported to have vocational goals on their IEPs, although students with mild mental retardation had more vocational goals than students with learning disabilities or emotional disturbances. Others have found that assessment data are often not used to formulate IEP goals (Dick, 1987; Janssen, Isles, O'Keefe, & Sabatino, 1988; Neubert, 1986). Another explanation might be that there is little cooperative planning between vocational and special educators, therefore, specific vocational goals do not appear on IEPs. Students in this study were not likely to have post-school transition goals on their IEPs. Establishing post-school goals is an issue which deserves increased attention within vocational education settings, since vocational educators and support personnel are often familiar with local employment opportunities and support services for students exiting school.

An important limitation regarding this study must be noted when interpreting the results. Survey respondents were asked to review school records and/or interview special education teachers in order to complete the survey. Due to the self report nature of this approach, the degree to which directors of special education carefully examined and reported related data is open to question.

In summary, the results of this study indicated that students with disabilities were using vocational education programs but not always a full range of programs and services as specified in vocational education legislation. Access and equity for students with special needs in vocational education are likely to remain complex issues for practitioners and policy makers (Brown, Kayser, & Smith, 1988; Phelps et al., 1989). Local and state education agencies must examine program placement and availability of assessment, support, and transition services within their own settings in order to implement strategies that make legislative mandates a reality for individuals with disabilities.

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IV. APPLYING FEDERAL AND STATE CHILD LABOR LAWS TO VOCATIONAL EXPERIENCE PROGRAMS

All community based vocational experiences must comply with: the Fair Labor Standards Act (FLSA); Employers Liability Act;Job Training Partnership Act (JTPA); Carl Perkins Vocational and Applied Technology Education Act; Individuals with Disabilities Education Act (IDEA); Targeted Jobs Tax Credit legislation; Americans with Disabilities Act (ADA); the Rehabilitation Act; Wisconsin's Compulsory School Attendance, Education for Employment, Youth Apprenticeship, and Technical Preparation Program statutes; Worker's Compensation Law and child labor laws.

A. Work Permits

Every employer who hires a minor for pay between 12 and 18 years of age must have on file a valid work permit before any work is performed. There is no exception for married youth, high school graduates or parents who employ their own children, 12 years of age or older, in connection with their trade or business. There are however, five activities where work permits are not required:

- agriculture
- apprentices
- domestic service
- volunteer work
- public entertainment

If the employer is a federally covered employer, proof of age may be required before the student can work. The Department of Industry, Labor and Human Relations issues a work permit for that purpose. Work permits may be obtained from child labor permit officers. Many of these officers are located in school offices. The student applies for the work permit and the employer is given the work permit, not the minor. The following information is needed before a work permit can be issued by the child labor permit officer:

- Proof of age (a birth record or baptismal certificate)
- Letter from employer stating his or her intention to employ the minor
- Letter from parent/guardian consenting to the employment (parent or guardian may counter sign the employer's letter)
- A $5.00 permit fee paid by the employer. (If the minor advances the fee, the employer must reimburse the minor no later than the first paycheck.)

Permits may be refused to a minor if the permit officer feels the minor is physically unable to do the work, or when in the opinion of the officer, it is in the best interests of the minor. A permit may also be refused if the employment is prohibited by the state's Child Labor regulations. The Department of Industry, Labor and Human relations may revoke any work permit if requested in writing by the school principal or minor's parent or guardian. The requesting party must demonstrate that an attempt has been made to resolve differences between minor, school and parents/guardian before the request has been made for revocation. For further information on work permits, contact the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations, P.O. Box 8928, Madison, WI 53708. Telephone (608) 266-6860.

B. Attendance

Attendance is an extremely important component regarding the success of any student enrolled in school. It is equally as important in vocational experience programs because it establishes habits and acceptable work behavior required in business and industry. It is recommended that school-supervised vocational experience programs incorporate all attendance requirements in the vocational agreement form which is required to be signed by the student, parent/guardian, the school **principal** and the employer; and be kept on file by both the school and the employer. [IND 70.03(3)] (See "Vocational Experience Agreement Form," page 126) School-supervised work experience may be one method of insuring or improving attendance for some students.

C. Wage Regulation

The Wisconsin Minimum Wage Law applies to student trainees who are performing work for an employer which meets the definition of an "employment relationship" under the Fair Labor Standards Act. (See Appendix A, Employment Relationship Under the Fair Labor Standards Act) The teacher-coordinator should find out if the work-study/employment is covered by the Fair Labor Standards Act (federal) or subject only to Wisconsin wage regulations. State standards differ from federal laws in some cases which requires the higher standards to be observed. The State of Wisconsin sets minimum wage rates for adults and minors in both non-agricultural employment and in agricultural employment. Rates are also set for employees who receive gratuities (tips). Questions on the Wisconsin minimum wage rates should be directed to the Equal Rights Division, P.O. Box 8928, Madison, WI 53708, telephone (608) 266-6860 or your local Job Service Office.

The U. S. Department of Labor, Wage and Hour Division, enforces the federal minimum wage. Questions on the federal law should be directed to U.S. Wage and Hour Office, Federal Center Building, Room 309, 212 E. Washington Avenue, Madison, WI 53703, telephone (608) 264-5221; or U.S. Wage and Hour Office, Room 108, Federal Building, 517 E. Wisconsin Avenue, Milwaukee, WI 53202-4504, telephone (414) 297-3585.

D. Special Minimum Wage Licenses and Special Worker Certificates

Regardless of a disability or its severity, the FLSA prohibits paying less than minimum wage to employees with disabilities unless they qualify for and have a special minimum wage license. Special Minimum Wage Licenses (WI) and Special Worker Certificates (Federal) are issued to employers or to individual handicapped workers to permit the employment of handicapped workers and student learners at a lesser hourly wage than prescribed in state and federal minimum wage law. The school is responsible for making the application for the employer or students with disabilities for students placed in a work/study program. The school must handle all the necessary paperwork although the license is issued to the employer or handicapped student. The license/certificate is issued for "individuals whose earning or productive capacity is impaired by age or physical or mental deficiency or injuries, at wages which are lower than the minimum wage...which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality and quantity of work."

When students with disabilities are being paid by the hour and their disabilities adversly "affect the quantity and quality of work," a Special Worker Certificate can be obtained by conducting a productivity study and making application to DOL. (See Appendices C and D for application forms) The wage that the worker is paid must be determined by conducting, within the first month of employment, an hourly rate study which compares the worker's productivity to a non-disabled experienced worker. The following form is accepted by DOL to establish "commensurate" wages for the employee with disabilities.

The requirements for obtaining a state license and/or federal certificate are the same. If a business is involved with Interstate Commerce, such as a food chain or a retail store, then the employer would have to have a state license and a federal certificate. If the business is only locally owned and operates only in Wisconsin, then just a state license is sufficient. The state and its political subdivisions (government and public school districts) are exempt from the state's special minimum wage license requirements but must meet the federal special worker certificate requirements if paying students less than minimum wage.

A Wisconsin special minimum wage license may be obtained from the Equal Rights Division, P.O. Box 8928, Madison, WI 53708, telephone (608) 266-6860. Federal special worker certificates may be obtained from the U.S. Department of Labor, Federal Building, 212 E. Washington Ave., Madison, WI 53703 (608) 264-5221; 108 Federal Building, 517 E. Wisconsin Ave., Milwaukee, WI 53203-4504 (414) 297-3585; Special Worker Certificate, Room 562, 2305 Dearborn, Chicago, IL 60604, telephone (312) 353-7246.

PROCEDURE FOR DETERMINING THE COMMENSURATE HOURLY WAGE FOR WORKERS WITH DISABILITIES

(To be conducted within the 1st month of employment and every subsequent 6 months.)

Employee:	Employer/Company:
Rating Period:	Rater:
Job Description:	If sheltered job, describe equivalent job in the community.

PRODUCTIVITY RATE DETERMINATION

Enter a numerical rate for the quantity and quality of the employee's with disabilities performance compared to that of an experienced nondisabled employee in the vicinity for the same tasks; where the nondisabled worker is considered to be performing at 100%.

Level of Productivity		Generally Unacceptable 0 - 20%	Far Below Average 21 - 40%	Well Below Average 41 - 60%	Significantly Below Average 61 - 80%	Approaches Average 81 - 99%	Meets Average Standards 100%
Work Factor	Factor Weight						
Quantity	90%						
Quality	10%						

COMPUTATION OF COMMENSURATE RATE

Quantity of work rate x .90 =	A	Quality of work rate x .10 =	B
A + B =	C	Prevailing* hourly rate for job =	D
C x D =	E	E = Commensurate hourly rate to be paid worker.	

* Rate paid an experienced nondisabled worker in the vicinity for work using similar methods and equipment.

E. Child Labor Requirements Under the FLSA: 14-15 Year Olds

As stated previously, Wisconsin's Child Labor Law is less stringent for 14 and 15 year olds than the federal Fair Labor Standards Act and consequently, the FLSA takes precedence. This situation has not been well publicized and has caused legal difficulty for employers who have been compliant with state labor law but in violation of federal. The result was the Department of Labor fining the employer thousands of dollars. Make sure any school work experience programs comply with federal as well as state child labor laws.

Comparison Between Wisconsin and Federal Employment Standards for 14 and 15 Year Olds

Maximum Hours of Work	Wisconsin	Federal
DAILY:		
School days: except last school day of the week	4 hours	3 hours
Last school day of the week	8 hours	3 hours
Non-school day	8 hours	8 hours
WEEKLY:		
School Week	18 hours	18 hours
School week less than 5 days	24 hours	18 hours
Non-school week	40 hours	40 hours
Permitted Time of Day	**Wisconsin**	**Federal**
School day	7am - 8pm	7am - 7pm
Last school day of the week	7am - 11pm	7am - 7pm
Non-school day preceding school day	7am - 8pm	7am - 7pm
Non-school day preceding non-school day	7am - 11pm	7am - 7pm
Day during non-school week	7am - 11pm	7am - 7pm
Day during summer recess	7am - 11pm	7am - 9pm

Federal child labor laws do not apply to:

- children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor;
- children employed as actors or performers in motion pictures, theatrical, radio,

or television productions;

- children engaged in the delivery of newspapers;
- homeworkers engaged in the making of wreaths.

Wisconsin child labor laws do, however, specify permitted hours and days for newspaper delivery and street trades for 14 and 15 year olds. (See p. 89)

Under federal laws, no 14 or 15 year old may work during school hours unless he/she is in an approved school-supervised and school administered Work Experience and Career Exploration Program (WECEP). While in a WECEP program, 14 and 15 year olds may work for as many as 3 hours on a school day and as many as 23 hours in a school week.

F. Safety Guidelines

1. Objectives of a Safety Program

    a. To avoid accidents.

    b. To develop an attitude of safety among students that will endure through their school experience and extend into their adult lives.

    c. To develop an attitude of safety among staff to insure a safe and healthful work environment, appropriate safety instruction, and enforcement of safe practices among students.

    d. To protect school personnel against liability judgments.

    e. To develop good citizenship qualities and healthy attitudes in regard to safe behavior at school, at work, in the community, and in the home.

    f. To inform all students and employees of acceptable safety procedures.

2. Supervision of Students

When students are in school, engaging in school-sponsored activities (i.e., work experience), or traveling to and from school on school buses or vehicles, they are responsible to the school, and the school is responsible for them. School personnel assigned to their supervision serve in loco parentis.

All students are to be under assigned adult supervision at all times when in-school, on school grounds, traveling under school auspices, or engaging in school-sponsored activities. School personnel assigned this supervision are expected to act as reasonably prudent adults in providing for the safety of the students in their charge. In keeping with this expected prudence, no teacher or other staff member shall leave his/her assigned group or student unsupervised.

3. Safety in the Classroom

A teacher is required to provide a safe environment for all students, either in the traditional and comparatively safe setting of regular classrooms or the high-risk settings such as shops, laboratories, field trips, and athletic events. To insure a proper standard of care several recommendations are suggested:

a. Teach a unit regarding the operation of equipment. Discuss topics such as loose clothing, jewelry, hair length. Also keep a copy of the student's quizzes as proof that the student did know the proper procedures.

b. Post safety reminders in conspicuous places around the equipment.

c. Provide adequate preinstruction regarding high-risk situations.

d. Report faulty or damaged equipment and discontinue use until repairs are made.

e. Provide a safe arrangement of classroom furniture and equipment.

f. Always use and require students to use safety equipment, guards and goggles where appropriate.

g. Read and follow students' IEPs regarding modifications to be made, alternative methods of instruction and use of assistive devices.

h. ALWAYS DOCUMENT THESE STEPS.

4. Safety on Field Trips and Community Experiences

a. Be certain the trip/experience is authorized by the school administration.

b. Know what dangers the particular trip might present and make plans to avoid those dangers.

c. Inform students in advance of possible hazards, and instruct them concerning rules and regulations to be observed.

d. Provide prior and post-instruction directly related to the community experience.

e. Provide for greater supervision than that which would be considered adequate on the school premises. Use certified school personnel, their numbers to be determined by the number of students, the students' ages and physical and mental abilities, and the hazards they are likely to encounter.

f. Be sure that tours through establishments such as factories are under the direct supervision of a qualified employee of the company, and do not assume unfamiliar duties on such tours.

g. When travel is necessary, use school or public transportation.

h. Use parental permission slips as a safety device, but don't be deceived--they do not absolve the school and teacher's legal responsibility.

i. Avoid water activities. If they are involved, be sure to have a trained lifeguard on duty.

j. Be prepared at all times to answer the court's question: What positive steps did you take to prevent this accident from occurring?

5. Safety Instructions for the Workplace

This briefing works best if students are touring the area in which they will be working and is conducted by the employer.

a. General Points

- Safety policy: Explain the policy and point out any aspects that apply particularly to students. Emphasize the student's personal responsibilities.

- Safety literature: Distribute and explain any relevant safety literature, taking into account the student's ages, length of stay and their potential exposure to hazards.

- Key safety people: Introduce them or give them their names. Tell students where they can be found and what they do.

- Prohibited areas: Describe any areas which students must not visit for safety reasons and tell them why this is so.

b. Workplace hazards

- Prohibited equipment: Clearly identify any equipment that students must never operate without the permission of the supervisor, and unless trained to do so. Stress that students are not to repair any equipment on their own, but to report it to the supervisor.

- Dangerous substances: Explain the importance of complying with advice given on container labels. Students should ask for help from the supervisor if they are unsure of what precautions to take.

- Lifting heavy equipment: Demonstrate the correct way to lift objects and explain why this is important.

- Housekeeping: Explain the importance of keeping work areas clean, the proper and safe storage of materials, and safety within their work area.

c. Safety precautions

- Safe systems of work: Explain the importance of safe working practices and any possible hazards associated with what they may encounter.

- Protective clothing (where applicable): Describe what is provided, when and why it must be used, and how to make any necessary adjustments.

- Safety equipment: Explain when and why it must be used, where it is kept, and how to use it.

- Hygiene: Tell students where washing facilities are and any specific rules that would apply pertaining to the type of work they are doing.

d. Emergency procedures

- First aid: Identify location of all first aid facilities. Explain procedures used when requiring first aid.
- Accident procedure: Explain that all accidents and all injuries must be reported. Explain to the students to whom and how to report an accident or injury.
- Fire alarm: Explain what students should do if they discover a fire and what procedures to follow.
- Emergency evacuation: Explain the procedure for an emergency evacuation to include appropriate routes to follow, exits to use and reporting procedures.

Check that students understand the importance of following the health and safety rules and the consequences when disobeyed. Stress that students who are unsure about any aspect should ask the supervisor. If the supervisor is unavailable, tell them whom they should contact.

The following checklist contains issues that commonly arise while students are on-the-job. It can be modified and expanded to fit the student's needs, types of work experiences and age ranges.

Checklist for Providing Safety Information

General safety rules

Explain safety policies.	___ Yes	___ No
Review safety literature	___ Yes	___ No
Identify key safety people	___ Yes	___ No
Describe prohibited areas.	___ Yes	___ No
Description, purpose and importance of material safety data sheet.	___ Yes	___ No

Workplace hazards

Review prohibitive equipment	___ Yes	___ No
Review dangerous substances.	___ Yes	___ No
Review dangerous practices and activities.	___ Yes	___ No
Review the lifting of heavy equipment.	___ Yes	___ No
Explain general housekeeping rules . .	___ Yes	___ No
Tour workplace before work begins. . .	___ Yes	___ No
Discuss employment with plant personnel	___ Yes	___ No
Review applicable Material Safety Data Sheets	___ Yes	___ No

Safety precautions

Describe safe working practices. . . .	___ Yes	___ No
Use of protective clothing	___ Yes	___ No
Use of safety equipment.	___ Yes	___ No
Location of hygiene facilities	___ Yes	___ No

Emergency procedures

First aid facilities	___ Yes	___ No
Accident procedures.	___ Yes	___ No
Fire alarms.	___ Yes	___ No
Emergency evacuations.	___ Yes	___ No

Liability

If paid experiences, employer has worker's compensation insurance or,	___ Yes	___ No

School district has an insurance rider
to cover students in off campus
programs. . . . . ___ Yes ___ No

Note: This checklist is meaningless unless **documented**. It is the responsibility of the supervising teacher to provide this documentation, to save this checklist and to demonstrate compliance later if necessary.

Site ______________________________ Date _______ Instructor _________________

G. Employment Generally Prohibited to Minors

There are specific rules for the kinds of work minors are prohibited from doing because the jobs have been found to be detrimental to their life, health, safety and/or welfare. Places of employment may also be dangerous or prejudicial to the life, health, safety and/or welfare of other employees or frequenters and no employer shall employ or permit these minors to work in such employments. (IND 70.06 Wis. Adm. Code) (Exemption - minors working in jobs which are part of an approved Youth Apprenticeship Program and safety training is provided.)

OCCUPATIONS PROHIBITED TO ALL MINORS - 18 and younger

1. Amusement parks, ski hills, street carnivals and traveling shows
2. Bakery machines
3. Brick, tile and related products
4. Coal mines
5. Excavation operations
6. Explosives
7. Hoists and hoisting apparatus
8. Lifeguard, swimming instructors and aides
9. Liquors
10. Logging, sawmill, lath mill, shingle mill or cooperage stock mill
11. Metal forming, punching and shearing power-driven machines
12. Mining (other than coal)
13. Motor vehicle driver and outside helper
14. Paper products machines
15. Radioactive substances and ionizing radiations, exposures
16. Roofing
17. Circular saws, band saws, chain saws and guillotine shears
18. Slaughtering, meat packing or processing or rendering
19. Strikes or lockouts
20. Wood working power-driven machines
21. Wrecking, demolition and shipbreaking

OCCUPATIONS PROHIBITED TO MINORS UNDER 16 YEARS OF AGE

22. Agriculture (See Federal Hazard Occupations involved in Agriculture section 570.71)
23. Airports
24. Gun clubs
25. Occupations involving or tending hoisting apparatus or any power-driven machinery other than office machines
26. Hospitals, nursing homes and personal patient care
27. Manufacturing, mining or processing occupations
28. Power-driven machinery
29. Public messenger service

H. Legal Aspects of Nonpaid Work Experiences

Work experiences in occupations not prohibited during regular school hours are not regarded as gainful occupations where no employer-employee relationship exists. An example would be job shadowing. These experiences are covered under the same regulations that apply to volunteer jobs. (See "Youth Service" page 93, and Appendix E, DOL letter on volunteerism) Students may engage in these work experiences under the following conditions:

1. The hours of service are performed as specified in a learning agreement.
2. Minors may not serve at any job prohibited by statute or orders of DILHR. (See G. Employment Generally Prohibited to Minors in this section.)
3. The program provides a true learning experience and is based on a bona fide curriculum.
4. Proper scholastic credit is given.

When students are involved in vocational or volunteer experiences in businesses that fall under the Fair Labor Standards Act (i.e., pay federal minimum wage), additional criteria must be met as described in detail in the FLSA section. The trainees or students are not considered employees within the meaning of the Fair Labor Standards Act if:

1. the volunteer relationship lasts no longer than thirteen weeks;
2. the learning, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
3. the learning is for the benefit of the trainees or students;
4. the trainees or students do not displace regular employees, but work under their close supervision;
5. the employer that provides the learning experience derives no immediate advantage from the activities of the trainees to students, and on occasion his/her operations may actually be impeded;
6. the trainees or students are not necessarily entitled to a job at the conclusion of the learning period;
7. the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in learning.

The Department of Labor has described a unique work experience at school for periods of an hour or less each day as a possible situation of non-payment of wages.

(f) The sole fact that a student helps in a school lunchroom or cafeteria for periods of 30 minutes to an hour per day in exchange for his/her lunch is not considered to be sufficient to make him or her an employee of the school, regardless of whether he or she performs such work regularly or only on occasion. Also, the fact that students on occasion do some cleaning up of a classroom, serve the school as junior patrol officers or perform minor clerical work in the school office or library for periods of an hour per day or less without contemplation of compensation or in exchange of a meal or for a cash amount reasonably equivalent to the price of a meal or, when a cash amount is given in addition to a meal, it is only a nominal sum, is not considered sufficient in itself to characterize the students as employees of the school. A similar policy will be followed where the students perform such tasks less frequently but for a full day, with an arrangement to perform their academic work for such days at other times. For example, the students may perform full-day cafeteria service four times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day. However, if there are other indicia of employment or the students normally devote more than an hour each day or equivalent to such work, the circumstances of the arrangement should be reviewed carefully.

I. Insurance

1. Worker's Compensation Insurance

Students enrolled in work experience programs and who receive payment of wages are covered by the **employer's** Worker's Compensation insurance program. Teachers and other licensed staff in these programs are covered under the District's Worker's Compensation program. This is an extremely important consideration and all employers should be made aware that they are assuming the worker's compensation liability for the students in work experience programs.

In the case of all programs where students leave school to go to work or to volunteer or for a career exploration activity, written agreements outlining the terms of the experience must be signed by the employers, parents, students, principal and teachers. The insurance carried by the school should be checked to be certain that work or participating experiences outside of school are covered for the protection of the students.

In a cooperative learning program, accidents on-the-job are covered by Worker's Compensation. A vocational student who performs service for another as part of his/her training and who is at all times under authoritative control of the employer who can dismiss him/her from service, is an employee for the purposes of Worker's Compensation. It is immaterial that the employer does not do the selecting, does not determine the duration of the relationship, or whether the student **is or is not paid** for his/her services. Other cases in unpaid status are decided on their own merits.

School districts should check with insurance carriers concerning liability and worker's compensation for work experience programs. Specifically, school districts should:

a. Check with their own insurance carrier regarding the district's liability for school-sponsored work experience programs. Liability may vary depending upon whether it is a paid work experience (the student is paid by the employer) or non-paid experience (the student is observing or job shadowing)

b. Check with the student's employer regarding his/her liability insurance.

c. Carry a rider and provide a copy of it to the employer.

2. Liability Coverage

Most employers already carry general liability protection on themselves and their employees as a normal business practice and their liability insurance would come into play if any negligence on their part is involved in a claim. Most school districts do not provide any coverage for employers involved with work experience programs. The district's liability coverage may cover the district and employees for any negligence that would occur as a result of their action while involved with these programs. It is important to remember that legal questions of negligence can only be decided in a court of law. Accidents involving students on the employers' premises, or under the employers' direction, might fall under the employers' liability insurance. If specific questions exist, contact your insurance agent or legal counsel. It would be beneficial to review your district's insurance coverage to insure that those people who should have this information are aware of what potential liability exists.

J. Transportation

Occasionally, work placement requires students to be transported from the school to the work site and back. Transportation arrangements should be made according to policies within the school district and **must be made according to any specifications in the student's IEP**, since transportation is a related service and must be provided at no cost to the student or parent if necessary for the student to benefit from special education. Considerations should be given to the distance between the school and the work site, the individual needs of each student, public (bus) and private transportation (personal or parental), and the availability of school transportation (school district vehicle). There are several ways to provide transportation:

1. School provides via school bus, school cars, etc. using teachers or teacher aides as drivers, or school bus drivers.

2. Student is reimbursed for usual transportation costs to transport self.

3. Parent provider.

4. Using local transportation provider such as public bus, or public transportation program such as handicapped and elderly transportation, ride share, social services, or taxi cab companies.

The type of insurance coverage that a school district carries, staff contracts, transportation contracts and the requirements for chauffeur licenses will determine the possible transportation arrangements. This information will need to be conveyed to coordinating staff and students participating in any work experience program.

What is required and agreed upon by the school district and the provider(s) of transportation service should be documented. It is the responsibility of the school district to put this agreement in writing for the protection of students and for the best interests of the school district. The intent here is to explore possible methods of transportation and not define a specific mode or responsible person(s).

In any case where the school is allowing someone to drive to the work site on their own or is paying mileage to a parent, teacher, student, etc. - to transport a student, the vehicle should be inspected and approved by the Department of Transportation. The driver should provide proof of insurance and license (check with insurance companies to determine level of insurance).

EXCERPTS FROM WI DPIs 1986 "WORK EXPERIENCE HANDBOOK"

V. Guidelines for Determining the Quality of Vocational Experienceor Work-Study Programs for Students with Disabilities

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Assessment and Individualizing the Vocational Experience

- Is the assessment process integrated into the IEP?

- Does the assessment process achieve the following:

  1. Identify potential occupational choices and work environments for further ecological assessment?

  2. Provide ecological assessment of specific work environments?

  3. Assess the specific subenvironments for full or partial participation? For example:

     a. The transportation subenvironment.
     b. The break/lunch room subenvironment.
     c. The work station subenvironment.
     d. Those subenvironments where socialization and leisure activities occur.

  4. Develop a criterion-referenced instrument for determining skill level specific to the performance task? (Functional Vocational Assessment)

  5. Address transition needs in the areas of independent living, employment and post-secondary education?

- Does the assessment process lead to realistic work experience opportunities?

- To what extent does the IEP address relevant pre-employment training skills during elementary school, including career awareness and exploration?

- Does the Individualized Education Program (IEP) reflect the following:

  1. Were a complement of participants (family, student, community agency, school, and employers) included to aid in the development of the IEP?

  2. Do the goals and objectives involving work experience reflect current "best practices?

a. a socially integrated community-based work-site?
b. a functionally based curriculum?
c. systematic program evaluation?
d. parent and community involvement?
e. an integrated service delivery system?
f. a measurement of the accomplishment of goals and objectives?
g. training in decision-making and problem-solving skills necessary for career development?
h. include the need for assistive devices if necessary?

3. Does the IEP address specific vocational training objectives?

4. Does the IEP specify both short and long-term outcome based goals for the student?

5. Does the student identify preferences and interests at the IEP meeting?

6. Does the IEP contain a statement of interagency responsibilities for the work experience, when appropriate?

7. Does the IEP contain appropriate related services if necessary for the student to benefit from the special education program? (transportation, rehabilitation counseling services, occupational therapy, etc.)

Competency-Based Vocational Education Program

- Does the school-based program support the training that the student receives on the job-site?

- Does the school supervise the community vocational experiences with licensed teachers?

- Do students receive instruction from qualified vocational instructors?

- The curriculum of the competency-based vocational education program that supports on-site training:

  1. analyzes and makes use of existing curriculum materials,

  2. revises and up-dates its classroom materials and equipment,

3. makes use of current testing material and media,
4. task analyzes work tasks,
5. updates the task analysis of work tasks,
6. devises adaptations and accommodations to the curricular materials,
7. identifies relevant academic, social, motor, physical, and other skills for instruction at school.

- Is the employer (or parents) provided with the opportunity to modify the vocational education program?

- Does the school provide homework that involves specific work tasks in the home environment?

  1. Can the student receive pay/allowance? Can these experiences be used to provide additional training or learning experiences?
  2. Are the work tasks in home, school, or business environments taught similarly?

- Does the school-based program increase the repertoire of co-requisite academic, social, physical, and work skills? change values, habits, and attitudes? increase employment potential?

- Does the school-based program lead to training in new occupations? in new community settings? to new leisure and recreational opportunities? to new daily living skills?

Community Based Experiences

I. The school basis for community-based experiences

- Does the school district have a rationale, philosophy, and policy for the work-study or work-experience programs?

- Does the program develop realistic occupational inventories for students?

- Does the program use the Education for Employment Council and its data to design and provide relevant experiences?

- Does the program consider occupational survey data/market trends?

- Does the school district have an active community awareness campaign that promotes current best practices that lead to competitive employment for students with disabilities?

- To what extent does the school district interview community agencies and businesses to determine available work study opportunities?

II. Employer's and co-workers' attitudes

- What are the employer's and co-workers' attitudes toward work experiences involving students with disabilities?

- Do employers and co-workers have realistic expectations?

- Does the employer value the training provided by the school district?

- Does the employer invest time to provide additional training/instruction?

III. To what extent do the employer and co-workers become actively involved in the training?

- Is the employer consulted regarding the academic and vocational curriculum? through all stages of schooling?

- Is the employer consulted regarding employment strategies?

- Do employers provide information on community employment trends? Participate on the Education for Employment Council?

- Do employers provide business contacts for other employment sites?

- Do employers participate in professional conferences, workshops, inservices, etc.?

- Do employers act as advocates for students?

- What opportunities for friendship and leisure activities exist with coworkers?

Provision for On-Site Training and Evaluation

- Has the IEP developed an outcome evaluation measure to monitor effectiveness during training? To use as follow-up?
- Does the on-site training program conduct an ecological assessment of the work tasks to be performed by the student that define:
    1. the specific work environments where the student is to work?
    2. the specific work tasks to be learned in that environment?
    3. a task analysis appropriate to the students needs?
- Does the employer provide a "report card" of progress?
- When difficulties arise with the student employee, does the on-site teacher employ a systematic decision making procedure to overcome the difficulty?
    1. What is the difficulty or barrier to competitive employment?
    2. What are a range of solutions to the problem?
    3. Has the on-site teacher considered the merits of the plan? What difficulties may arise? What additional resources are needed?
    4. Has the on-site teacher selected the best alternative?
    5. During implementation, has the teacher evaluated the plan's effectiveness?
    6. Has the teacher made appropriate changes (if necessary)?

Community and Inter-Agency Cooperation

I. To what extent do community-based service providers aid the training process?

- To what extent do other responsible parties participate in the IEP committee?

- To what extent does communication with representatives of adult service agencies occur? To determine the entry requirements of available work or living environments?

- To what extent do adult service providers participate with the school district in delivering transition services?

- To what extent does the community receive the technical assistance needed to implement community-based vocational training programs?

- To what extent have the various responsibilities and tasks been designated to specific personnel?

- To what extent has the program specified a philosophy, roles and responsibilities, defined guidelines, and developed an annual report? Does the program have the input and endorsement of school administrators, the board of education, parents, faculty, and employers?

- To what extent has the work experience or work study programs sought the support of community civic organizations (e.g., Chamber of Commerce, Jaycees, the Rotary Club, etc.)?

II. To what extent do parents and family participate in the program?

- What is the rationale for parent participation?

- At what point in secondary schooling do parents become involved in the transition to postsecondary settings? What are the specific goals and objectives for this transition?

- To what extent do parents aid the coordination of program components (e.g., participating on the IEP committee, training, sharing student's medical and agency reports, generalization of learned skills, etc.)?

III. To what extent is the program supported by the board of education and central administration?

- To what extent do the board of education and administrators support community-based training? Support the reassignment of classroom personnel to community-based training? Support the shift of classroom monies and curricular materials to functional community-based training materials?

- To what extent does the board provide transportation and other related services?
- To what extent have the school's liability and insurance needs been addressed for work experiences and community based programs?
- To what extent does the board allow staff time for development of work sites and supervision of students on the job?
- To what extent does the board support public relations?

From Wisniewski, Lech; Sandra Alper; Patrick Schloss. "Work-Experience and Work-Study Programs for Students with Special Needs: Quality Indicators of Transition Services." Career Development for Exceptional Individuals, Spring, 1991, 14:2.

A. STUDENT VOCATIONAL EVALUATION FORM

Student's Name:	**Birthdate:**
School:	**Graduation Date:**
Parents/Guardian:	**Program:**
Parents' Address:	**Handicap(s):**
Teacher Reporting:	**Date of Eval:**

ACADEMICS

Functional Reading Skills	
Functional Math Skills	
Functional Expressive Language	
Functional Language Comprehension	
Functional Writing Skills	

Implications for vocational exploration:

Implications for vocational instruction:

Implications for work experiences:

EXCEPTIONAL EDUCATIONAL NEEDS

EENs	
Related Services	
Assistive Devices	

STUDENT'S PREFERENCES/INTERESTS

VOCATIONAL CLASSES COMPLETED

Vocational Classes	Competencies Mastered

VOCATIONAL EXPERIENCES

Site	
Purpose (Explore,Assess, Train, Work/Study)	
Activities	
Skills Mastered	
Hrs/Wk, Dates	
Site	
Purpose (Explore,Assess, Train, Work/Study)	
Activities	
Skills Mastered	
Hrs/Wk, Dates	

PRIORITIZED DESIRABLE WORKER CHARACTERISTICS [1]

Worker Characteristics	Demon-strates	Instructional Methods/ Adaptations Needed to Improve
1. Good attendance		
2. Punctuality		
3. Acceptance of supervision		
4. Ability to accept criticism & implement suggestions		
5. Ability to follow/retain verbal directions		
6. Ability to read/carry out simple written directions		
7. Cleans up after self		
8. Ability to attend to task until completed		
9. Ability to work independently once task is learned		
10. Awareness of safety precautions		
11. Respect & ability to care for equipment		
12. Ability to adapt to new people/situations		
13. Ability to cooperate/get along		
14. Ability to measure		
15. Appropriate self-control/frustration management		
16. Ability to ask for assistance		
17. Ability to perform job adequately		
18. Confidence in performing task/job		
19. Ability to maintain quality of work/correct own errors		
20. Ability to maintain adequate productivity/pace		
21. Has realistic job goals		
22. Has knowledge/acceptance of rules		
23. Flexibility for different types of jobs		
24. Willingness to work		
25. Has image of self as a worker, orientation toward work, interest in job		
26. Endurance/stamina		
27. Ability to communicate basic needs		
28. Initiative		
29. Acceptance of responsibility		

Worker Characteristics	Demon-strates	Instructional Methods/ Adaptations Needed to Improve
30. Exhibits good grooming/appropriate personal hygiene		
31. Dresses appropriately		
32. Demonstrates helping behaviors/teamwork		
33. Takes pride in work		
34. Ability to exercise good judgement/problem solving skills		
35. Willingness to learn		

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[1] ADAPTED FROM "A COMPARISON BETWEEN THE PERCEPTIONS OF SPECIAL EDUCATORS AND EMPLOYERS: WHAT FACTORS ARE CRITICAL FOR JOB SUCCESS?", LINDA MCCREA, *CAREER DEVELOPMENT FOR EXCEPTIONAL INDIVIDUALS*, 14:2, 121-130, 1991.

B. SCHOOL SUPERVISED VOCATIONAL EXPERIENCE PLAN/EVALUATION FORM

Student's Name:	**Birthdate:**
School:	**Graduation Date:**
Parents/Guardian:	**Program:**
Parents' Address:	**Handicap(s):**
Vocational Site:	**Hours:**
Employer:	**Phone:**
Teacher Supervising:	**Date of Eval:**

PURPOSE OF VOCATIONAL EXPERIENCE

X	Type of Vocational Experience	Max. Hours per Job Experience per School Year
	Vocational Exploration	5 Hours per Job Experience
	Vocational Assessment	90 Hours per Job Experience
	Vocational Training	120 Hours per Job Experience
	Work/Study (Paid Employment)	See WI Child Labor Laws & FLSA

SPECIFIC VOCATIONAL ACTIVITIES TO BE EXPERIENCED AND SKILLS TO BE PERFORMED (FROM IEP)

Vocational Competencies	Demonstrates	Instructional Methods/Adaptations Needed to Improve
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

PRIORITIZED DESIRABLE WORKER CHARACTERISTICS [1]

Worker Characteristics	Demon-strates	Instructional Methods/ Adaptations Needed to Improve
1. Good attendance		
a. calls in absent only when ill		
b. calls worksite supervisor in advance of absence to allow staff substitutions		
c. not more than one absence per month		
2. Punctuality		
a. arrives at work early and is ready to work at assigned time		
b. takes breaks at assigned times and departs per schedule		
3. Acceptance of supervision		
a. changes behavior when requested		
b. respects the authority and decision-making role of supervisors		
c. pays attention		
d. resolves differences of opinion in a satisfactory manner		
e. participates in training programs		
f. requests clarification when necessary		
4. Ability to accept criticism gracefully & implement suggestions		
5. Ability to follow/retain verbal directions		
6. Ability to read/carry out simple written directions		
7. Cleans up after self		
8. Ability to attend to task until completed		
a. manages time effectively		
9. Ability to work independently once task is learned		
10. Awareness of safety precautions		
11. Respect of & ability to care for equipment		
12. Ability to adapt to new people/situations		
13. Ability to cooperate/get along		

Worker Characteristics	Demon-strates	Instructional Methods/Adaptations Needed to Improve
a. participates in work-site social activities (birthday parties, breaks, etc.)		
b. assists co-working with tasks, shares responsibility		
c. shares in co-workers humor		
d. joins in after-work social activities (clubs, parties, bowling teams, etc.)		
14. Ability to measure		
15. Appropriate self-control/frustration management		
16. Ability to ask for assistance		
17. Ability to perform job adequately		
a. uses appropriate techniques		
b. completes all tasks		
18. Confidence in performing task/job		
19. Ability to maintain quality of work/correct own errors		
a. recognizes & analyzes problems with patience		
b. identifies early signs of problems		
c. consults with others, gathers information		
d. considers alternative solutions & their consequences		
20. Ability to maintain adequate productivity/pace		
21. Has realistic job goals		
22. Has knowledge/acceptance of rules		
a. understands employment conditions		
b. understands work schedule		
c. understands personnel procedures		
23. Flexibility for different types of jobs		
24. Willingness to work		
25. Has image of self as a worker, orientation toward work, interest in job		

Worker Characteristics	Demon-strates	Instructional Methods/ Adaptations Needed to Improve
26. Endurance/stamina		
27. Ability to communicate basic needs		
28. Initiative		
a. seeks additional work when tasks are completed		
b. practices skills/requests feedback		
c. inquires about job & related work		
29. Acceptance of responsibility		
a. has provided for child care		
b. keeps work records		
c. prepares, plans & organizes job tasks		
d. maintains physical & mental health		
30. Exhibits good grooming/appropriate personal hygiene		
31. Dresses appropriately		
32. Demonstrates helping behaviors/teamwork		
33. Takes pride in work		
34. Ability to exercise good judgement/problem solving skills		
a. manages personal problems outside work		
b. anticipates consequences of personal actions		
c. exhibits behavior appropriate to the job setting		
35. Willingness to learn		

' ADAPTED FROM "A COMPARISON BETWEEN THE PERCEPTIONS OF SPECIAL EDUCATORS AND EMPLOYERS: WHAT FACTORS ARE CRITICAL FOR JOB SUCCESS?", LINDA MCCREA, *CAREER DEVELOPMENT FOR EXCEPTIONAL INDIVIDUALS*, 14:2, 121-130, 1991.

Supervising Teacher's Signature ____________________ Date ____________

Employer's Signature ____________________ Date ____________

Student's Signature ____________________ Date ____________

C. VOCATIONAL EXPERIENCE AGREEMENT FORM

Student's Name:	**Birthdate:**
School:	**Graduation Date:**
Parents/Guardian:	**Program:**
Parents' Address:	**Handicap(s):**
Student's preferences:	
Employer:	**Phone:**
Teacher Supervising:	**Date of Agreement:**

TYPE OF VOCATIONAL EXPERIENCE

☐ **Job Exploration (cannot exceed 5 hours per job)**

Community Site/Employer	
Activities/Responsibilities	
Credits:	**Dates:**________-________
Teacher Supervisor:	**Schedule: M**_____-_____ **T**_____-_____ **W**_____-_____ **Th**_____-_____ **F**_____-_____

☐ **Vocational Assessment (cannot exceed 90 hours per job)**

Community Site/Employer	
Activities/Responsibilities	
Credits:	**Dates:**________-________
Teacher Supervisor:	**Schedule: M**_____-_____ **T**_____-_____ **W**_____-_____ **Th**_____-_____ **F**_____-_____

☐ **Vocational Training (cannot exceed 120 hours per job)**

Community Site/Employer	
Activities/Responsibilities	
Credits:	**Dates:**________-________
Teacher Supervisor:	**Schedule: M**_____-_____ **T**_____-_____ **W**_____-_____ **Th**_____-_____ **F**_____-_____

All the following conditions are required or all the protections of the FLSA apply.

1. Competitive employment at minimum wage is not immediately feasible & disability requires intensive on-going support in work setting.
2. Community based experiences are supervised by public school teachers.
3. IEPs define transition components of vocational experiences.
4. Parent & students fully informed of IEP & participate voluntarily.
5. Experiences do not entitle student to wages.
6. Experiences do not immediately benefit employers (no displacement of employees)
7. Students are directly & continuously supervised by school staff or employees.
8. Placement made per IEP, not to meet business needs.
9. Times per experience are specifically limited by IEP.
10. Students not entitled to employment at conclusion of IEP.
11. Experiences may not be those prohibited by statute.
12. Experiences based on a bona fide curriculum.
13. School credit is given.

☐ **Volunteer Services (hours, time of day, and activities limited by WI child labor regulations - no longer than 13 weeks)**

1. Only for nonprofit educational, charitable, religious or community service organizations.
2. Organization must have written consent of student's parents.
3. Student must be supervised by a responsible adult.
4. Student must have orientation training and supervision to make services a genuine learning experience.
5. The organization using the student volunteer will provide insurance to cover the student when contributing service to the organization.
6. Liability coverage will be provided to protect the student in the case of an accident to a third party.
7. Students will not be economically exploited nor used to replace paid employees. (Ind 70.08)

Community Site/Employer		
Student Activities/Responsibilities		
Dates:	**Schedule**	**M**_____-_____ **T**____-_____ **W**____-_____ **Th**____-____ **F**_____-______
_____-______	**Credits:**	**Teacher Supervisor:**

☐ **Work/Study (all WI child labor laws, the Fair Labor Standards Act, and IDEA apply)**

1. The student will receive at least minimum wage or have a special minimum wage license.
2. The student has a work permit.
3. The student must be age 16 or over.
4. The parents must approve.
5. The work experience must lead to high school graduation (credits must be awarded).
6. The work experience must be supervised by licensed teachers.
7. The work experience must be paired with instruction.
8. Transportation between work and school must be at no cost to the student or parents.
9. While at work, students are covered by the employer's Worker's Compensation Insurance.
10. Teachers and other district staff working in the community based site are covered under the district's Worker's Compensation Insurance.

Community Site/Employer		
Student Activities/Responsibilities		
Dates:___-___	**Schedule**	**M**_____-_____ **T**____-_____ **W**____-_____ **Th**____-____ **F**_____-______
Salary:	**Credits:**	**Teacher Supervisor:**

STUDENT RESPONSIBILITIES

As a vocational student, I agree to the following:

1. I will be directly responsible to my employer and teacher supervisor for my actions on the job and in school.
2. I will complete the time commitment at the vocational site for the duration of the vocational experience.
3. I will treat all confidential information with the proper respect.
4. I will automatically be dropped from the program and receive no school credit if I quit the experience.

5. I will comply with the goals and objectives in my IEP and try to reach the criteria for success in my IEP.
6. I will abide by all rules and polices at my vocational site and at school. I will, to the best of my ability, attempt to meet the vocational goals specified in my "School Supervised Vocational Experience Plan/ Evaluation."
7. I will discuss all special problems with my teacher supervisor and will request changes if necessary.
8. I will not report to my vocational site on any day that I do not report to school without school approval.
9. I understand that I may be dismissed from the vocational experience for failure to follow the rules for school supervised vocational experiences or for failure to fulfill my job duties while on the job.
11. I will participate in the development of my IEP and discuss my transition preferences and choices.
10. I understand my IEP transition goals, my vocational plan, and the rules for vocational experience.

PARENT RESPONSIBILITIES

As a parent of the vocational student, I agree to the following:

1. I grant permission for all parties to this agreement to share information regarding my child to improve his/her program.
2. I will not permit my child to report to the vocational site on any day she/he does not attend school.
3. I will discuss special problems with the teacher supervisor and will assist in solving any attendance, academic, or behavioral problems.
4. I will participate in the development of my child's IEP and discuss transition goals and services.
5. I have read the rules of participation and discussed them with my child.
6. I understand the major emphasis of this program is developing functional vocational skills which will enable my child to participate in and contribute to our society.

EMPLOYER RESPONSIBILITIES

As an employer of the vocational student, I agree to the following:

1. Provide the student with a vocational experience as described above.
2. Provide a variety of experiences as described in the "Vocational Experience Plan" which enables the student to learn all aspects of the particular vocational site.
3. Evaluate the student at regular intervals as requested by the supervising teacher or as described in the "Vocational Experience Plan."
4. Cooperate with the school in establishing and maintaining vocational curriculum and experiences related to business needs.
5. Establish work standards which are the same as for other beginning workers. (See "Vocational Experience Plan.")
6. Terminate this agreement for reasons my organization cannot tolerate; however, this will be done only after consulting the teacher supervisor.
7. Inform the teacher supervisor of the person who is directly responsible for the student's supervision and training and of any change(s) in the student's vocational assignments.
8. Not permit the student to work on any day in which the student is absent from school.
9. Assure that the student is not placed in any situation which would violate child labor regulations or use the vocational experience program to replace bona fide employees.
10. Provide student with appropriate safety instruction necessary for the vocational experience.
11. For students in work/study experiences, pay at least minimum wages (or have a special minimum wage license), have workers compensation insurance, and keep employee wage and hour records per the Fair Labor Standards Act.
12. Provide direct and close supervision of the student by a qualified and experienced person.
13. Keep this "Vocational Experience Agreement" on file.

SCHOOL DISTRICT RESPONSIBILITIES

As the teacher supervisor of the vocational experience and the representative of the school district, I agree to the following:

1. Insure the student has received appropriate career education and vocational instruction to prepare him/her to successfully participate in the vocational experience.
2. Insure the student has been prepared to participate in his/her IEP development and to discuss realistic transition preferences and choices.
3. Insure assistive devices, if necessary, are procured in order to allow participation in the vocational experience.
4. Insure transportation to and from the work site and school, if necessary, is provided at no cost to the student and parents.
5. Invite any community agency responsible for providing or paying for transition services to the IEP meeting to help develop and provide the vocational experiences.
6. Place student at vocational site which is matched to the student's IEP goals and objectives.
7. Conduct periodic vocational assessment to determine student's progress and need for modifications in program.
8. Review rules for participation with the student.
9. Assist all parties in solving special problems and will take proper action.
10. Provide classroom instruction needed to assist the student to succeed in the program.
11. Be responsible for the coordination of each student's program.
12. Supervise the vocational site per vocational experience plan to observe the student and consult with the student's vocational site supervisor.
13. Assist the employer in placing students in safe and healthy work assignments in accordance with child labor laws and their IEP needs.

IEP GOALS, OBJECTIVES AND TRANSITION SERVICES

Individual vocational goals and objectives/transition services from the IEP to be addressed through the vocational experience.

COMMUNITY AGENCY RESPONSIBILITIES

As a community agency that is responsible for providing or paying for transition services, I agree to provide the following services as part of this vocational experience:

SIGNATURES

Student:	Date:
Parents:	Date:
Principal:	Date:
Employer:	Date:
Teacher supervisor:	Date:
Community Agency:	Date:
Community Agency:	Date:

VI. GUIDELINES FOR CONDUCTING FUNCTIONAL VOCATIONAL ASSESSMENTS

A. KEY INFORMATION TO GATHER

1. Functional usage of academics (e.g., math, time telling, reading, money, expressive language, written language)
    - Is the student able to: tell time, balance a checkbook, use a calculator, read, write, etc.? How well can the individual do these things?
    - What type of support facilitates the use of these skills?
    - Adaptations needed?
2. Following directions
    - How simple or complex do directions need to be in order for the student to follow them and complete work tasks (e.g., should directions be one step or three combined steps).
3. Behavior
    - How does the student behave in various environments that are familiar and unfamiliar (i.e., is behavior appropriate). What support/intervention do you as a teacher provide to the individual during your time together? If the student behaved inappropriately, was there an obvious cause, or was he/she communicating a preference, etc.?
4. Learning Style
    - Determine the modality strength of the individual (e.g., auditory, visual, tactile learner). Does a concrete or abstract direction make sense to the person, can he/she recall skills used earlier (i.e., memory), and is the person able to use language receptively and/or expressively?
5. Individual preferences
    - These must be explored during IEP development (we suggest under "evaluation") and strongly taken into account when job matching. Logic dictates and IDEA requires that the student attend his/her IEP meetings to express preferences in all areas of program.
6. Individual strengths
    - Emphasizing individual strengths will result in a higher quality job match.
7. Nature and intensity of supports needed in past
    - Get a sense of what type of placement option an individual would do best in (i.e., individual, group)

Adapted from the **Functional Assessment Training Manual**, Institute for Supported Employment, University of Wisconsin-Madison, Department of Continuing and Vocational Education. John Thompson, Curtis Olson, Jill Wheeler, 1991.

- How much direct support will be necessary—initially, after two months, etc.)

- What type of support will be best (i.e., learning style, training techniques, etc.)

8. Work history

   - Learn as much as possible about an individual's past work history in order to capitalize on type of work environment, level of stimulation, interaction, and communication necessary for a successful work experience in the future.

9. Social skills/interactions

   - Is the student able to engage in appropriate social skills and interactions during the assessment process?

   - Is support/interaction necessary and/or appropriate (e.g., what type, and at what level)?

10. Communication (receptive and expressive)

    - How does the student communicate expressively and receptively?

    - Does the person utilize an alternative communication system?

    - Does a communication system need to be developed, or further developed, for the individual?

    - Is there a need for an interpreter?

11. Work endurance/stamina

    - From the assessment process, make recommendations as to how many hours the student will be able to work initially and over time.

12. Medical/physical status and management (including AODA issues)

    - Investigate any relevant medical information that impacts upon the student (e.g., medication, seizures, side effects of medication).

13. Transportation needs

    - Learn/explore available options for each individual's situation (e.g., taxi, bus, bike, car, walking, etc.)

    - Will the student need assistance in learning how to get from school to work via transportation system? For how long?

14. Current financial information and concerns

    - Any disincentives to work? Will benefits be affected (SSI, SSDI)?

15. Past education and training

- Where
- Dates attended
- Diploma/degree
- Favorite courses
- How well did the individual do?
- Any concerns during this time

16. Past work experience

- Where
- Dates employed
- Job title
- Responsibilities/duties
- How was job obtained?
- Hours/schedule—Were there problems with the schedule?
- Wages
- Likes/dislikes
- Transportation used
- Was there variety on job?

17. Medication (and side effects)

- What
- Dosage
- When does the person take medication?
- Is he/she consistent?
- Attitude toward medication
- Side effects/symptoms
- Is the individual receiving help to deal specifically with the medication issue?

- Will this be a factor in considering work?

18. Job seeking skills

    - Does individual have a resume, interviewing skills, etc.?

19. Family member/Community Services involvement

    - Gather as much information from other appropriate sources as possible.

    - Sources may include parents/guardians, residential staff, teachers, past job coaches, CSP/social workers, friends, etc.

20. Work related skills

    - Can the student get from home to work independently and on time, communicate appropriately, occupy his/her time well during break, use money to purchase snack/lunch, etc.?

21. Meaningful movements

    - Is the student able to perform one motor movement volitionally? How does this movement or others assist the individual in self-help skills, the community, and ultimately doing a job? Are adaptations necessary?

22. Orientation/Mobility skills

    - Orientation refers to an overall sense of direction (e.g., finding a building or a room in a particular building). Mobility indicates being able to move through an area from point (a) to point (b) successfully (e.g., moving from the dairy case to frozen foods without tipping over the displays on the way).

23. Fine motor skills

    - Is the student able to grasp and hold money, write with a pen or pencil, button, snap, etc.

24. Work schedule

    - What times are best for the student to work (e.g., a.m., p.m., three times per week; full days; or a combination of the options listed)?

B. DECIDE HOW TO GATHER INFORMATION AND DRAW CONCLUSIONS BASED ON DATA

1. Best practices for determining a process for assessing employment options for individuals with disabilities (25 hours or 80% of the assessment must be in the community)

    a. establish a relationship with the student

    b. individualize the environment to be assessed

        1) student/consumer selects the environment

        2) assess familiar routines; allow student/consumer to be accompanied by a trusted person

    c. gather information from other providers: family, employers, "community support specialists," etc.

    d. the best information will be obtained when the student/consumer is supported and reassured

2. Sample Interview Questions for Significant Others

    a. What type of job do you think the individual would be interested in?

    b. Has the individual worked competitively before? (If yes, then a.)

        1) Was the job perceived as being positive? In what aspects? What could have been done differently to make the situation more positive?

    c. How many hours could he/she comfortably work?

    d. What, in your opinion, would be the most suitable job for the individual? What have you observed to be that person's strengths/preferences relative to a work situation?

    e. What related skills would you like to be addressed in job training?

        1) Communication
        2) Money handling
        3) Transportation, mobility (city busing, electric wheelchair training, tracking)
        4) Self care
        5) Appropriate social behavior

    f. What skills would you like to see the individual learn on the job?

    g. What recreation/leisure activities are important for the individual to be involved in?

    h. Describe the type of work atmosphere you envision for the individual?

    i. Explain what you feel are important considerations in developing a job site? (i.e., co-worker relationships, social interactions, physical/medical concerns.)

    j. How is the individual currently participating in work activity at home? Identify his/her responsibilities.

        - Table setting
        - Dish washing
        - Laundry
        - Yard work
        - House cleaning
        - Bedroom

- Specific duties

k. From your observations, identify strengths in completing tasks. How does he/she enjoy participating in work activities at home?

l. Describe the kind of help/guidance given from significant others in enabling the individual to complete tasks, such as meal preparation, self care (i.e., grooming, bathing, dressing).

m. SSI concerns? (Address SSI issues)

n. Describe the person's level of independence in accessing community environments and his/her involvement in activities. Describe preferences surrounding those activities.

- Restaurants
- Grocery shopping
- Department stores
- Hair appointments
- Pharmacy
- Banking
- Church
- School
- Health club
- Memberships in specific organizations
- Social clubs
- Movie theaters
- Bowling
- Night club

o. Describe personal interests/hobbies

- T.V.
- Reading
- Music
- Records, stereo
- Board games
- Bicycling
- Jogging
- Gardening
- Other activities, e.g. , going out to eat, movies, etc.
- Sporting events

p. With whom does the individual do these leisure-time activities? Family, neighbors, friends?

(Udvari-Solner, 1986)

C. Functional Evaluation Components

Student's Name:	**Reporter's Name:**
Medical/Physical Information:	**Social/Emotional/Behavioral Information:**
Communication:	**Natural Support Network/Significant Other:**
Meaningful Movements/Need for Assistance:	**Adaptations/Assistive Devices:**
Related Skills:	**Work History:**
Work Preferences/Dislikes:	**Mobility/Transportation:**
Work Endurance/Stamina:	**Level of Support Needed:**

D. STUDENT INFORMATION FORM

FAMILY INFORMATION	
Student's Name:	Birth Date:
Student's vocational preferences:	
Parents/Guardian:	Work Phone:
Address:	Home Phone:
Family vocational expectations:	
Family living expectations:	
Person Completing:	Date:
Other information:	

MEDICAL INFORMATION	
Doctor:	Dr's. Phone:
Hospital:	Phone:
Insurance/Medical Card #:	Other Emergency Information:
Responsible Person:	
Phone:	
Allergies:	Procedural Instructions:
☐ Seizures	Describe:
Procedures to follow:	

MEDICATIONS

Name	Purpose	Schedule	Side Effects

DISABILITY INFORMATION

VISION ☐ Blind ☐ Low Vision Acuity________

Description of Condition(s)	Adaptations/Assistive Devices Required

HEARING ☐ Deaf ☐ Hard of Hearing ________

Description of Condition(s)	Adaptations/Assistive Devices Required

PHYSICAL

☐ Walking Problem Assistance Procedure -

☐ Stairs Problem Assistance Procedure -

Wheelchair User ☐ Self Transfer ☐ With Assistance

Transfer Procedure -

Prosthetic Devices:

Considerations:

Fine Motor Limitations:

Adaptations:

Health Conditions:

Physical Conditions:

SPEECH/LANGUAGE

Communication System:

Impairments:

Assistive Devices:

Receptive Level:

Expressive Level:

Method of initiating communication:

BEHAVIOR/EMOTIONS

Problems	Interventions/Reinforcements

LEARNING/COGNITION

Skills	Problems	Adaptations/Interventions
☐ Memory ☐:		
☐ Money ☐:		
☐ Spatial ☐:		
☐ Time ☐:		
☐ Writing ☐:		
☐ Reading ☐:		
☐ Math ☐:		
☐ Transportation ☐:		
☐ Verbal Comprehension ☐:		
☐ Visual Comprehension ☐:		
☐ Organization ☐:		
☐ Attentiveness ☐:		
☐ Initiative ☐:		
☐ Perseverance ☐:		
☐ Distractibility ☐:		
☐ Anxiety ☐:		
☐ Sequencing ☐:		
☐ Other(s) ☐:		

DAILY LIVING SKILLS INFORMATION

Skills	Problems	Adaptations/Interventions
☐ Eating ☐:		
Preferences:		Dislikes:
☐ Nutrition ☐:		
Diet restrictions:		

DAILY LIVING SKILLS INFORMATION (Cont.)

Skills	Problems	Adaptations/Interventions
☐ Recreation ☐:		
Dislikes:		
Preferences:		
☐ Sociability ☐:		
☐ Hygiene ☐:		
☐ Sexuality ☐:		
☐ Housekeeping/Management ☐:		
☐ Parenting ☐:		
☐ Money Management ☐:		
☐ Self-Advocacy ☐:		
☐ Citizenship ☐:		
☐ Community Involvement ☐:		
☐ Dressing/Clothing ☐:		
☐ Health Care ☐:		
☐ Food Preparation ☐:		
☐ Agency Use ☐:		
☐ Independence ☐:		

E. PLACEMENT STRATEGIES AND OPTIONS

1. Stagger - Start
    a. Individual placements - Initially may have individual work fewer hours and gradually increase his/her time
    b. Cluster site
        1) Start more skilled individuals first
        2) Begin in one area and gradually expand
        3) Heterogeneously group individual students, i.e., not all students with CD at one site.
2. Back-Up Coverage
    a. Have teachers and aides available for back-up
    b. Schedule coverage for weekly staffings
    c. Keep clipboard with critical information on each student
    d. Team concept - teacher, aide, employer form a team

F. LEARNING THE JOB AND PERFORMING A TASK ANALYSIS

1. Job orientation
    a. Teacher and aide learn job
2. Task analysis/non-disabled person inventory
    a. Purpose: Break a job down to component parts to learn steps
    b. Task/Discrepancy analysis: Techniques used to compare the performance of an individual with a disability to a non-disabled person. This technique is used to identify instructional strategies, goals/objectives, and possible adaptations (Brown, Shirago, York, Zanella, and Rogan, 1984)
        - Important for identifying:
        1) What individual needs to learn
        2) Possible adaptations
        3) Problem areas

G. EXAMPLE OF DISCREPANCY ANALYSIS

Student:	**Date:**	**Reporter:**
Vocational Site: Grocery	**Activity:** Stocking shelves	
Task Analysis **Observable/Measurable**	**+ = acceptable performance of skill** **- = unacceptable performance of skill**	**Instructional strategies/adaptations, Assistive devices**
Non-disabled Person's Performance Inventory	**Student's Performance Inventory**	**Comments**
1. Gets clipboard labeled "Canned & Packaged"	1. – Cannot read the words on clipboard, told what words are.	Put student's name on clipboard to be used.
2. Gets lined paper and puts on board	2. – Forgets what he needs. Teacher – "What do you need?"	Put a picture of lined paper on clipboard.
3. Gets pencil or pen from counter	3. – Forgets what he needs. Teacher – "You need a pencil"	Attach pencil to clipboard.
4. Writes date at top of paper	4. – Cannot write date from memory. Teacher – "The date is ____"	Have student use a date watch.
5. Locates shelf in back for canned goods	5. +	
6. Locates product name on carton	6. +	
7. Writes product name on clipboard	7. +	
8. Repeats #'s 6 & 7 until done with all cartons on shelf	8. +	
9. Locates shelf out front for canned goods.	9. +	
10. Determines if products on list need stocking.	10. +	

EXAMPLE OF DISCREPANCY ANALYSIS (Cont.)		
Task Analysis **Observable/Measurable**	**+ = acceptable performance of skill** **- = unacceptable performance of skill**	**Instructional strategies/adaptations, Assistive devices**
Non-disabled Person Performance Inventory	**Student's Performance Inventory**	**Comments**
11. Repeats #10 for each product	11. +	
12. Gets dolly	12. - Forgets what he needs. Teacher - "You need a dolly"	Put picture of dolly on a sequential list of items needed.
13. Gets pricing gun.	13. - Forgets what he needs. Teacher - "Get pricing gun."	Put picture of pricing gun on sequential list of items needed.
14. Goes to back to shelves	14. + Teacher - "Get pricing gun."	
15. Puts 2 cartons of product that are circled on list on dolly	15. - Doesn't have enough strength to lift. Help lifting cartons.	Teach from whom and how to request assistance.
16. Maneuvers dolly to shelf out front	16. +	
17. Locates product on shelf	17. +	
18. Locates price on carton	18. +	
19. Sets pricing gun a. $ sign b. dollars column c. tens column d. ones column e. checks to see if gun is set correctly f. if gun is set incorrectly, corrects	19. - Forgets the order for setting pricing gun Teacher-Set pricing gun.	Trial problems in setting pricing gun.
20. Puts price on product.	20. +	

EXAMPLE OF DISCREPANCY ANALYSIS (CONT.)		
Task Analysis **Observable/Measurable**	**+ = acceptable performance of skill** **- = unacceptable performance of skill**	**Instructional strategies/adaptations, Assistive devices**
Non-disabled Person Performance Inventory	**Student's Performance Inventory**	**Comments**
21. Places product on shelf a. moves products already on shelf forward b. starts stocking from back c. lines products up straight d. stacks products to proper height e. lines products with other products	21. +	
22. Crosses product out on list	22. +	
23. Puts empty cartons in front	23. +	
24. Repeats #'s 15-23 until all products circled on list are stocked.	24. +	

H. SAMPLE TASK ANALYSIS/DISCREPANCY ANALYSIS FORM		
Student:	**Date:**	**Reporter:**
Vocational Site:	**Activities:**	
Task Analysis **Observable/Measurable**	**+ = acceptable performance of skill** **- = unacceptable performance of skill**	**Instructional strategies/adaptations, Assistive devices**
Non-disabled Person's Performance Inventory	**Student's Performance Inventory**	**Comments**

I. IDENTIFYING WHAT TO TEACH ON THE IEP

1. Identify performance deficits and areas for training or adaptations under IEP section "present level of educational performance"
2. Develop annual goals directed at specific deficits
3. List priorities of objectives to work on
4. Describe evaluation criteria, procedures and schedule for measuring accomplishment of objectives

J. TEACHING STRATEGIES

1. Attempt to use natural cues as much as possible, avoiding artificial ones; and involve all of the senses
    a. match teaching style to the learning style of the student (visual, auditory, tactile)
    b. be as concrete as possible in communicating, vs. abstract
    c. be aware of the typical learning obstacles of poor: discrimination skills, integration of information, generalization, communication, information storage and recall
    d. teach tasks in natural environment where they are performed
2. Strategies
    a. Provide physical assistance or guidance for a student to perform part or all of a task
        1) Prime assistance – maintained physical assistance
        2) Prompt – initial and/or intermittent assistance
        3) Shadowing – following/shadowing student's movements
        4) Considerations
            a) Most intrusive movement in individual's repertoire
            b) Resistance to touch (tactile defensiveness)
            c) Systematically plan for fading
        5) Cautions
            a) Use before letting individual try without help
            b) May be reinforcing
            c) Dependency
            d) Easy to over-assist
            e) Easy to overlook natural cues
    b. Within Stimulus Prompts – Part of the task/materials are exaggerated on some dimension
        1) Consideration - Difficult to use

c. Verbal Cues – Verbal directions or requests requiring relatively specific action

    1) Direct
    2) Indirect
    3) Considerations

        a) Simple without sounding condescending
        b) Age-appropriate
        c) Tone and level of voice
        d) "Try another way"
        e) Pair with another type of assistance
        f) Fade from direct to indirect
        g) Student needs to understand words being used
        h) Hearing unimpaired

d. Visual Cues – cues that student **observes** to assist in completing task

    1) Gestures
    2) Modeling
    3) Pictures/highlighting (also may be considered form of adaptation)
    4) Considerations

        a) Student's vision must be unimpaired to utilize visual cues effectively.
        b) Student must be able to maintain visual attention
        c) Pictures/symbols need to be interpreted/understood by student
        d) For modeling, student must be able to imitate motor actions
        e) Naturally occurring gestures should be used whenever possible
        f) When modeling, be aware of any spatial perception difficulties the student may have, as well as whether student is right or left handed

3. Methods of presenting entire task

    a. Chaining – A procedure that involves teaching a complete sequence of behaviors

        1) Forward Chaining – Teaching the first step, then second, etc.
        2) Backward Chaining – Teaching the last step, then second to last, etc.

    b. Isolated Step – Teaching critical steps in task, not necessarily in any order

    c. Complete Cycle – Teaching **all** steps in task in the order in which they occur

4. Additional Teaching Strategies and Concerns

    a. Successive approximation – Rewarding behaviors that closely resemble desired performance

    b. Reinforcement – Provide an individual with positive reinforcement for a correct response

    c. Methods for correcting errors

        1) Trial and error

   - 2) Call attention to natural cues
   - 3) Provide artificial cues
   - 4) Reward successive approximations

5. Fading or Reducing Instructional Intervention

   a. Reduce assistance provided to student

   b. Decrease rate/intensity of positive reinforcement

   c. Fading needs to be **planned, systematic, and gradual**

   d. Transferring supervision to On-Site Personnel

      1) Teacher initially does total training
      2) Share training strategies with aide and/or co-workers
      3) Explain withdrawal of supervision
      4) Identify co-worker or supervisor in natural position to work with individual
      5) Co-worker may indicate an interest
      6) Maintain regular contact with co-worker and supervisor

K. HOW TO INCLUDE TRANSITION SERVICES IN THE IEP DEVELOPMENT

1. Required content of an IEP:

   a. A statement of the child's present levels of educational performance

   b. A statement of annual goals

   c. Short-term instructional objectives to meet goals

   d. A statement of the specific educational services to be provided

   e. A statement of the related services to be provided:

      1) transportation
      2) developmental, corrective and other supportive services
      3) speech pathology
      4) audiology
      5) psychological services
      6) physical therapy
      7) occupational therapy
      8) recreation (including therapeutic recreation)
      9) early identification and assessment of disabilities
      10) counseling services
      11) medical services for diagnosis or evaluation
      12) social work services
      13) rehabilitation counseling services
      14) parent counseling and training

   f. Extent to which child will be able to participate in regular educational programs

g. A statement of the needed transition services to students beginning no later than age 16

    1) when appropriate for the individual, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting.

    2) if a participating agency other than the district fails to provide agreed upon services, the IEP team must reconvene and identify alternative strategies to meet the transition objectives

h. The projected date for initiation of services

i. The anticipated duration of services

j. Appropriate **objective evaluation criteria** to determine at least annually if instructional objectives are being achieved

k. Appropriate **evaluation procedures** to determine at least annually if instructional objectives are being achieved

l. Appropriate **evaluation schedules** to determine at least annually if instructional objectives are being achieved

2. **What constitutes the "transition services" which must be addressed in the IEP?**

a. a coordinated set of activities for a student, designed within an outcome-oriented process

b. the process promotes movement from school to:

    1) post-school activities
    2) post-secondary education
    3) vocational training
    4) integrated employment (including supported employment)
    5) continuing and adult education
    6) adult services
    7) independent living
    8) community participation.

c. the coordinated set of activities must

    1) be based upon the individual student's needs
    2) take into account the student's preferences and interests
    3) include instruction
    4) include community experiences
    5) include the development of employment objectives
    6) include the development of other post-school adult living objectives
    7) include, when appropriate, acquisition of daily living skills
    8) include, when appropriate, functional vocational evaluation

3. What are examples of appropriate transition curriculum domains from which to develop a "coordinated set of activities for a student?"

a. community participation skills

b. personal and daily living skills

c. recreation and leisure skills

d. vocational and career skills

e. post-secondary education skills

IEP TRANSITION PLANNING DOMAINS

Home/Living

- Independent Living—No Support
- With Roommate
- With Family or Relative
- Semi-independent Living Services
- Supervised Apartment
- Group Home—Specialized Training
- ICF-MR (Ongoing Support)
- Waivered Services
- Adult Foster Care
- Adult Nursing Needs

Personal/Home Needs

- Independent—Needs no Services
- Parenting Skills
- Use of Community Resources
- Citizenship Skills
- Money Management Skills
- Meal Preparation Skills
- Housekeeping Skills
- Assertiveness Training
- Self Care Skills

Recreational/Leisure Needs

- Independent Recreation and Leisure
- Family Supported Recreation and Leisure
- Community Activities: Sports, Social Clubs, YMCA, Community Ed Classes
- Community Parks and Recreation Programs
- Church Groups
- Specialized Recreation for Disabled

Community Participation

- Independent—Needs no Services
- Public Transportation
- Family Transports
- Car Pools
- Specialized Transportation

Social/Sexual Needs

- Needs Family Planning Services
- Needs Support Group
- Needs Counseling Services
- Needs Respite Care

Advocacy/Legal Needs

- Guardianship Need
- Legal Aid
- Wisconsin Coalition for Advocacy
- Attorney

Medical Needs

- Group insurance policy available (e.g., Medicaid, Champus, Blue Cross, HMO, etc.)
- Independent in Monitoring Medical Needs and Scheduling Appointments
- Dental Care
- Requires Medical Supervision & Scheduling
- Medication Supervision

Post-Secondary Education

- University
- Community College
- Vocational Technical College
- Military Service
- Community Education Course
- Apprenticeship

Jobs/Job Training

- Competitive Employment—No Support
- Competitive Employment—Transitional or Time Limited (OJT, JTPA)
- Supported Competitive Employment Minimum Wage or Above, Individual Placement
- Supported Job—Subminimum Wage, Individual Placement—TJC
- Enclave—Small Group Placed in Existing Business, Ongoing
- Mobile Work Support Crew—Small Group in Community
- Entrepreneurial Model—Small Private Business
- Sheltered Workshop
- Work Activity Center
- Day Activity Center
- Job Corps

Financial/Income Needs (May be Combination of Sources)

- Earned Wages Only
- Earned Wages & SSI
- SSI Only - PASS
- Unearned Income (Gifts, Family Support)
- Emergency Income Options (Food Stamps, Unemployment Compensation)
- Medical Assistance
- Trust/Will

From the Minnesota Department of Education

4. How is work experience in integrated settings included on the IEP?

a. All work experience for all students must comply with state and federal child labor laws.

   1) students must be aged 16
   2) students must have a work permit
   3) parents must approve

b. All work/study programs must comply with the Compulsory School Attendance Law. s.118.15

   1) work experience during the school day must

      a) lead to high school graduation (credits must be awarded)
      b) be supervised by licensed teachers
      c) be paired with instruction

   2) transportation between work and school, if necessary, must be provided at no cost to the student or parent

c. All work/study programs for all students must comply with Wisconsin's Education for Employment Standard.

   1) must include the practical application of basic skills
   2) must include career exploration which is not sex-role stereotyped
   3) must include school supervised work experience
   4) must include employability skills instruction
   5) must include the study of practical economics
   6) must provide grades 9-12 accessibility to market-based vocational curriculum
   7) must be integrated with other programs in the school and with other agencies in the district

d. The IEP committee must justify "removal from the regular education environment" when designing a community based work experience for a student

e. An "annual goal" must address the specific vocational or career skill which is to be achieved through the work experience

f. The "present levels of educational performance" related to the vocational skill goal must be documented and must demonstrate the "individual student's needs" for services in that area. This could be accomplished through a functional vocational evaluation, a curriculum based vocational evaluation, a vocational preference evaluation, but should be quantifiable and replicable. In addition, for 16 year olds and above, this component of the IEP could be used to report the student's "preferences and interests" in the vocational/career area. If it is a continuation goal from the previous IEP, it could be extrapolated from the previous IEPs short-term objectives' evaluation outcomes.

g. The IEP committee must list short-term objectives, ideally sequential, which will enable the student to accomplish the vocational skill goal. The objectives must allude to the work experience, what instruction is being provided, and what employment outcome is desired. The instructional objectives must be stated in such a way as their accomplishment can be measured.

h. The IEP committee must develop an evaluation plan for every objective, which states what the criterion of success is, how it will be measured and when it will be measured. ("objective evaluation criteria, evaluation procedures and evaluation schedule")

i. The IEP committee must state what specific educational services will be provided to meet this annual vocational/work goal. Examples could be:

   1) Job finding and placement by the work/study coordinator in the district;

   2) Securing a job training program through the Private Industry Council and local Job Training Partnership Act coordinator;

   3) Providing vocational coursework, in the district or the local WTCS, which relates to the student's job placement.

j. The IEP committee must state the related services the student will need in order to benefit from the special education program. Examples of related services which might be necessary to reach the vocational goal are:

   1) Under "rehabilitation counseling services," group instruction, provided by the DVR counselor, on available community jobs and DVR services which can assist students in accessing and keeping them;

   2) Under "parent counseling and training," inservices and worksite visitations for reluctant parents to demonstrate the feasibility of community integration and employment for their child with disabilities;

   3) Under "transportation," providing cab fare or bus passes for the student to get to the community work site;

   4) Under "developmental, corrective and other supportive services," securing a special minimum wage license from DILHR for the student.

5. **How does an IEP committee go about their task of stating "needed transition services, and interagency responsibilities or linkages?"**

   a. The IEP committee must state the transition services the student needs. Examples of "coordinated sets of activities" in this area of vocational training will require IEP committee participation from the respective vocational experts (vocational instructor, LVEC, DVI, DVR, WTCS counselor, etc.) and are:

      1) enrollment in the district's Tech Prep program (coordinated between the WTCS and district);

      2) on-the-job training supervised by DVR and paired with instruction from the special education program;

      3) enrollment in a district's cooperative business program with adaptations per the IEP, linkage support from the designated vocational instructor (DVI) and special instruction from the special education program.

   b. The IEP committee, when appropriate for the individual student, must state "interagency responsibilities or linkages (or both) before the student leaves the school setting." In order to make a statement of another agency's responsibilities, the IEP committee must include a representative of that agency who can make such commitments. How other agencies participate in the IEP development needs to be established by administrative agreements among those agencies and the district. Linkages can be addressed on the IEP by statements indicating that referrals will be made on specific dates to appropriate agencies, consultation with involved agencies will occur on a periodic basis, etc. Such statements could be made under IEP headings of "objectives, related services or action taken." Examples of interagency responsibilities and linkages in the area of vocational skills are:

1) IEP referral to a county mental health board of a 16 year old who is "not expected to be enrolled in an educational program 2 years from the date of the report and may require services" of the Community Support Program from that board; [ss. 115.85(4)]

2) Commitment from the WTCS transition specialist to assist the EEN student who is enrolled in the high school and taking a vocational class at the WTCS part-time;

3) Commitment from the DVR counselor to assess the EEN student to determine eligibility for DVR services;

4) Commitment from the Developmental Disabilities Office to provide legal services to the student and insure that Social Security benefits are in place.

L. MONITORING PROGRESS - EVALUATION

1. Importance of data collection

   a. Visual indicator of performance and progress

   b. Provides ongoing assessment information to determine accomplishment of IEP objectives and/or need to revise

   c. Helps monitor special-minimum wage

   d. Helps analyze effectiveness of teaching strategies; appropriateness of activity

   e. Required on IEP in evaluation section

   f. If IEP comprehensively and conscientiously developed and updated, it is the ideal communication instrument on the student's skills and weaknesses over his/her entire school experience for many agencies' information needs.

2. When to record data

   a. IEP committee decision - Data may be taken weekly, biweekly, beginning/end of month (under "schedule" of evaluation on IEP)

3. Cautions

   a. Why are you taking data? Is it being used for program monitoring, changes, accountability—or sitting uselessly in a file?

b. Process needs to be consistent across agency personnel and results communicated to all involved-including student!

c. Sharing data across agencies always requires adult student or parent permission.

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VIII. APPENDICES

A. Employment Relationship Under the Fair Labor Standards Act

B. Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act

C. Federal Application for Special Worker Certificate

D. State Application for Special Minimum Wage License

Employment Relationship Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

APPENDIX A

WH Publication 1297
(Revised May 1980)
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This publication is for general information and is not to be considered in the same light as statements of position contained in Interpretative Bulletins published in the Federal Register and the Code of Federal Regulations, or in the official opinion letters of the Wage and Hour Administrator.

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

EMPLOYMENT RELATIONSHIP UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act contains provisions and standards concerning recordkeeping, minimum wages, overtime pay and child labor. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce and also to employees in certain enterprises which are so engaged. Federal employees are also subject to the recordkeeping, minimum wage, overtime, and child labor provisions of the Act. Employees of State and local government are subject to the same provisions, unless they are engaged in traditional governmental activities, in which case they are subject to the recordkeeping and child labor requirements. The law provides some specific exemptions from its requirements as to employees employed by certain establishments and in certain occupations.

The Act is administered by the U.S. Department of Labor's Wage and Hour Division with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission and the Tennessee Valley Authority. The Office of Personnel Management is responsible for administering the Act with regard to all other Federal employees.

For the Fair Labor Standards Act to apply to a person engaged in work which is covered by the Act, an employer-employee relationship must exist. The purpose of this publication is to discuss in general terms the latter requirement.

If you have specific questions about the statutory requirements, contact the W-H Division's nearest office. Give detailed information bearing on your problem since coverage and exemptions depend upon the facts in each case.

STATUTORY DEFINITIONS

Employment relationship requires an "employer" and an "employee" and the act or condition of employment. The Act defines the terms "employer", "employee", and "employ" as follows:

"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. - Section 3(d).

(1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.
(2) In the case of an individual employed by a public agency such term means--
- (A) any individual employed by the Government of the United States--
  - (i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),
  - (ii) in any executive agency (as defined in section 105 of such title),
  - (iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,
  - (iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or
  - (v) in the Library of Congress;
- (B) any individual employed by the United States Postal Service or the Postal Rate Commission; and
- (C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual--
  - (i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and
  - (ii) who--
    - (I) holds a public elective office of that State, political subdivision, or agency,
    - (II) is selected by the holder of such an office to be a member of his personal staff,
    - (III) is appointed by such an officeholder to serve on a policymaking level, or
    - (IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.*

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

* See note on top on next page

*On June 24, 1976, the Supreme Court, in the case of National League of Cities v. Usery, ruled that it was unconstitutional to apply the minimum wage and overtime provisions of the Fair Labor Standards Act to State and local government employees engaged in activities which are an integral part of traditional government services. The Court expressly found that school, hospital, fire prevention, police protection, sanitation, public health, and parks and recreation activities are among those to which the minimum wage and overtime provisions do not apply. However, it is the Department's position that the decision effects no change in the application of the child labor or recordkeeping provisions.

"Employ" includes to suffer or permit to work. - Section 3(g).

EMPLOYMENT RELATION DISTINGUISHED FROM COMMON LAW CONCEPT

The courts have made it clear that the employment relationship under the Act is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the Act and that under the common law arises from the fact that the term "employ" as defined in the Act includes "to suffer or permit to work". The courts have indicated that, while "to permit" requires a more positive action than "to suffer", both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relationship under the Act.

TEST OF THE EMPLOYMENT RELATION

The Supreme Court has said that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the Act; it has also said that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical concepts", but depends "upon the circumstances of the whole activity" including the underlying "economic reality". In general an employee, as distinguished from an independent contractor who is engaged in a business of his own, is one who "follows the usual path of an employee" and is dependent on the business which he serves. The factors which the Supreme Court has considered significant, although no single one is regarded as controlling, are:

(1) the extent to which the services in question are an integral part of the employer's business;

(2) the permanency of the relationship;

(3) the amount of the alleged contractor's investment in facilities and equipment;

(4) the nature and degree of control by the principal;

(5) the alleged contractor's opportunities for profit and loss; and

(6) the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

TRAINEES

The Supreme Court has held that the words "to suffer or permit to work", as used in the Act to define "employ", do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

(1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) the training is for the benefit of the trainees or students;

(3) the trainees or students do not displace regular employees, but work under their close observation;

(4) the employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his operations may actually be impeded;

(5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6) the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

EFFECT OF "SALE" ON THE RELATIONSHIP

An employment relationship may exist between the parties to a transaction which is nominally a "sale." An employee is not converted into an independent contractor by virtue of a fictitious "sale" of the goods produced by him to an employer, so long as the other indications of the employment relationship exist. Homeworkers who "sell" their products to a manufacturer are his employees where the control exercised by him over the homeworkers through his ability to reject or refuse to "buy" the product is not essentially different from the control ordinarily exercised by a manufacturer over his employees performing work for him at home on a piece rate basis.

FRANCHISE AGREEMENTS

The Act generally provides that a retail or service establishment which is under independent ownership would not lose its independent status solely because it operates under a franchise agreement. On the other hand, the franchised establishment and its employees may, in certain situations, be considered to be part of the franchisor's business. This would be particularly relevant in a situation where a franchisee is in control of the details of the day to day operations of the establishment, but the franchisor retains control over the basic aspects of the business. Where such a situation exists, they would be considered to be parts of a single business, and the employees of the franchised outlet would be considered to be employees of the franchisor.

FACTORS WHICH ARE NOT MATERIAL

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where the work is performed, the absence of a formal employment agreement and whether the alleged independent contractor is licensed by the State or local government are not considered to have a bearing on determinations as to whether or not there is an employment relationship. Similarly, whether a worker is paid by the piece, by the job, partly or entirely by tips, on a percentage basis, by commissions or by any other method is immaterial. The Supreme Court has held that the time or mode of compensation does not control the determination of employee status.

EFFECT OF EMPLOYMENT RELATIONSHIP

Once it is determined that one who is reputedly an independent contractor is in fact an employee, then all the employees of the so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer, who is responsible for compliance with the Act. However, in order to protect himself against the "hot goods" prohibition of the Act, a manufacturer or producer should undertake to see that even a true independent contractor complies with the law.

VOLUNTEER SERVICES

The Act defines the term "employ" as including "to suffer or permit to work". However, the Supreme Court has made it clear that the Act was not intended "to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another". In administering the Act, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar nonprofit corporations which receive their services.

For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs. The fact that services are performed under such circumstances is not sufficient to create an employee-employer relationship.

Religious, Charitable or Nonprofit Organizations: There is no special provision in the Act which precludes an employee-employer relationship between a religious, charitable, or nonprofit organization and persons who perform work for such an organization. For example, a church or religious organization may operate an institution of higher education and employ a regular staff who do this work as a means of livelihood. In such cases there is an employee-employer relationship for purposes of the Act.

There are certain circumstances where an individual who is a regular employee of a religious, charitable or non-profit organization may donate services as a volunteer and the time so spent is not considered to be compensable "work". For example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The Department will not consider that an employee-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. However, this does not mean that a regular office employee of a charitable organization, for example, can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

Members of Religious Orders: Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religious order are not considered to be "employees" within the meaning of the law. However, the fact that such a person is a member of a religious order does not preclude an employee-employer relationship with a State or secular institution.

JOINT EMPLOYMENT

A single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act, since there is nothing in the Act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employments for purposes of the Act depends upon all the facts in the particular case. If the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s) all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the Act, including the overtime provisions, with respect to the entire employment for the particular workweek. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) An arrangement between employers to share an employee's services. For example, two companies on the same or adjacent premises arrange to employ a janitor or watchman to perform work for both firms. Even though each entity carries the employee on its payroll for certain hours, such facts would indicate that the employee is jointly employed by both firms and both are responsible for compliance with the monetary provisions of the Act for all of the hours worked by the employee; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee. For example, employees of a temporary help company working on assignments in various establishments are considered jointly employed by the temporary help company and the establishment in which they are employed. In such a situation each individual company where the employee is assigned is jointly responsible with the temporary help company for compliance with the minimum wage requirements of the Act during the time the employee is in a particular establishment. The temporary help company would be considered responsible for the payment of proper overtime compensation to the

employee since it is through its act that the employee received the assignment which caused the overtime to be worked. Of course, if the employee worked in excess of 40 hours in any workweek for any one establishment, that employer would be jointly responsible for the proper payment of overtime as well as the proper minimum wage; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reasons of the fact that one employer controls, is controlled by, or is under common control with the other employer.

However, if all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act.

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Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

APPENDIX B

WH-1330
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Child Labor Bulletin No. 101

(Child Labor Bulletin No. 102 deals with employment of minors in agriculture.)

This booklet is a guide to the provisions of the Fair Labor Standards Act (also known as the Wage-Hour law) which apply to minors employed in *nonagricultural* occupations. In addition to child labor provisions, the Act also contains provisions on minimum wage, overtime, and recordkeeping.

Other Child Labor Laws

Other Federal and State laws may have higher standards. When these apply, the more stringent standard must be observed. All states have **child labor laws and compulsory school attendance laws.**

Note to Employers

Unless otherwise exempt, a covered minor employee must be paid according to the statutory minimum wage and overtime provisions of the Act.

Coverage of the Child Labor Provisions

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

(1) whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or

(3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which were previously covered regardless of their annual dollar volume of business, are now subject to the $500,000 test.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the increase in the enterprise coverage dollar volume test must continue to pay its employees not less than $3.35 an hour, and continues to be subject to the overtime pay, child labor, and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least $50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

In or About an Establishment Producing Goods for Commerce

Producers, manufacturers, or dealers are prohibited from shipping or delivering for shipment in interstate commerce any goods produced in an establishment in or about which oppressive child labor has been employed within 30 days prior to the removal of the goods. It is not necessary for the employees to be working on the goods that are removed for shipment in order to be covered.

Minimum Age Standards for Nonagricultural Employment

Oppressive Child Labor is Defined as Employment of Children Under the Legal Minimum Ages

14 Minimum age for employment in specified occupations outside school hours for limited periods of time each day and each week.

16 BASIC MINIMUM AGE FOR EMPLOYMENT. At 16 years of age youths may be employed in any occupation, other than a nonagricultural occupation declared hazardous by the Secretary of Labor.

18 Minimum age for employment in nonagricultural occupations declared hazardous by the Secretary of Labor.

- No minimum age for employment which is exempt from the child labor provisions of the Act.
- No minimum age for employment with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory as limited by section 13(f) of the Act.

Exemptions From the Child Labor Provisions of the Act

The Child Labor Provisions Do Not Apply To:

- Children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor.
- Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).

Employment Standards for 14 and 15-Year-Olds

(These standards are published in Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, Child Labor Regulation No. 3)

Employment of 14 and 15-year-old minors is limited to certain occupations under conditions which do not interfere with their schooling, health, or well-being.

Hours-Time Standards

14 AND 15-YEAR-OLD MINORS MAY NOT BE EMPLOYED:

1. DURING SCHOOL HOURS, *except* as provided for in Work Experience and Career Exploration Programs.
2. BEFORE 7 a.m. or AFTER 7 p.m. *except* 9 p.m. from June 1 through Labor Day (time depends on local standards).
3. MORE THAN 3 HOURS A DAY —on school days.
4. MORE THAN 18 HOURS A WEEK—in school weeks.
5. MORE THAN 8 HOURS A DAY—on nonschool days.
6. MORE THAN 40 HOURS A WEEK—in nonschool weeks.

Permitted Occupations for 14 and 15-Year-Old Minors in Retail, Food Service and Gasoline Service Establishments

14 AND 15-YEAR-OLD MINORS MAY BE EMPLOYED IN:

1. OFFICE and CLERICAL WORK (including operation of office machines).
2. CASHIERING, SELLING, MODELING, ART WORK, WORK IN ADVERTISING DEPARTMENTS, WINDOW TRIMMING and COMPARATIVE SHOPPING.
3. PRICE MARKING and TAGGING by hand or by machine, ASSEMBLING ORDERS, PACKING and SHELVING.
4. BAGGING and CARRYING OUT CUSTOMERS' ORDERS.
5. ERRAND and DELIVERY WORK by foot, bicycle, and public transportation.
6. CLEANUP WORK, including the use of vacuum cleaners and floor waxers, and MAINTENANCE of GROUNDS, but not including the use of power-driven mowers or cutters.
7. KITCHEN WORK and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.
8. WORK IN CONNECTION WITH CARS and TRUCKS if confined to the following:
   - Dispensing gasoline and oil.
   - Courtesy service on premises of gasoline service station.
   - Car cleaning, washing, and polishing.
   - Other occupations permitted by this section.

   BUT NOT INCLUDING WORK:

   Involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
9. CLEANING VEGETABLES and FRUITS, and WRAPPING, SEALING, LABELING, WEIGHING, PRICING, and STOCKING GOODS when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

In Any Other Place of Employment

14 AND 15-YEAR-OLD MINORS MAY BE EMPLOYED IN any occupation *EXCEPT* the excluded occupations listed below.

14 AND 15-YEAR OLD MINORS MAY NOT BE EMPLOYED IN:

1. Any MANUFACTURING occupation.
2. Any MINING occupation.
3. PROCESSING occupations such as filleting of fish, dressing poultry, cracking nuts, or laundering as performed by commercial laundries and dry cleaning *(except* in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list).
4. Occupations requiring the performance of any duties in WORKROOMS or WORKPLACES WHERE GOODS ARE MANUFACTURED, MINED, OR OTHER WISE PROCESSED *(except* to the extent expressly permitted in retail, food service, or gasoline service establishments in accordance with the foregoing list).
5. PUBLIC MESSENGER SERVICE.
6. OPERATION OR TENDING OF HOISTING APPARATUS or of ANY POWER-DRIVEN MACHINERY) other than office machines and machines in retail, food service, and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments).
7. ANY OCCUPATIONS FOUND AND DECLARED TO BE HAZARDOUS.
8. OCCUPATIONS IN CONNECTION WITH:
   - a. TRANSPORTATION of persons or property by rail, highway, air, on water, pipeline, or other means.
   - b. WAREHOUSING and STORAGE.
   - c. COMMUNICATIONS and PUBLIC UTILITIES.
   - d. CONSTRUCTION (including repair).

   Except Office or Sales Work in connection with a., b., c., and d. when not performed on transportation media or at the actual construction site.
9. ANY OF THE FOLLOWING OCCUPATIONS IN A RETAIL, FOOD SERVICE, OR GASOLINE SERVICE ESTABLISHMENT:
   - a. WORK performed IN or ABOUT

BOILER or ENGINE ROOMS.

b. Work in connection with MAINTENANCE or REPAIR OF THE ESTABLISHMENT, MACHINES or EQUIPMENT.

c. OUTSIDE WINDOW WASHING that involves working from window sills, and all work requiring the use of LADDERS, SCAFFOLDS, or their substitutes.

d. COOKING (*except* at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and BAKING.

e. Occupations which involve OPERATING, SETTING UP, ADJUSTING, CLEANING, OILING, or REPAIRING, power-driven FOOD SLICERS and GRINDERS, FOOD CHOPPERS and CUTTERS, and BAKERY-TYPE MIXERS.

f. Work in FREEZERS and MEAT COOLERS and all work in PREPARATION OF MEATS for sale (*except* wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas).

g. LOADING and UNLOADING GOODS to and from trucks, railroad cars, or conveyors.

h. All occupations in WAREHOUSES *except* office and clerical work.

Exceptions

WORK EXPERIENCE AND CAREER EXPLORATION PROGRAMS (WECEP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14 and 15-year-olds in approved school-supervised and school-administered Work Experience and Career Exploration Programs (WECEP). Enrollees in WECEP may be employed:

- During school hours
- For as many as 3 hours on a school day.
- For as many as 23 hours in a school week.
- In occupations otherwise prohibited for which a variation has been granted by the Administrator of the Wage and Hour Division.

The State Educational Agency must obtain approval from the Administrator of the Wage and Hour Division before operating a WECEP program.

Hazardous Occupations Orders in Nonagricultural Occupations

(These Orders are published in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations.)

Hazardous Occupations Orders

The Fair Labor Standards Act provides a minimum age of 18 years for any nonagricultural occupations which the Secretary of Labor "shall find and by order declare" to be particularly hazardous for 16 and 17-year-old persons, or detrimental to their health and well-being. This minimum age applies even when the minor is employed by the parent or person standing in place of the parent.

The 17 hazardous occupations orders now in effect apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which found.

The Orders in Effect Deal With:

1. Manufacturing and storing explosives, (p. 3)
2. Motor-vehicle driving and outside helper. (p. 4)
3. Coal mining. (p. 4)
4. Logging and sawmilling. (p. 5)
5. Power-driven woodworking machines. (p. 5)
6. Exposure to radioactive substances. (p. 6)
7. Power-driven hoisting apparatus. (p. 6)
8. Power-driven metal-forming, punching, and shearing machines. (p. 7)
9. Mining, other than coal mining. (p. 8)
10. Slaughtering, or meat-packing, processing, or rendering. (p. 9)
11. Power-driven bakery machines. (p. 9)
12. Power-driven paper-products machines. (p. 10)
13. Manufacturing brick, tile, and kindred products. (p. 10)
14. Power-driven circular saws, band saws, and guillotine shears. (p. 11)
15. Wrecking, demolition, and shipbreaking operations. (p. 11)
16. Roofing operations. (p. 11)
17. Excavation operations. (p. 11)

Manufacturing or Storage Occupations Involving Explosives (Order No. 1)

The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are prohibited:

1. All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subparagraph 2. of this paragraph) manufacturing or storing explosives or articles containing explosive components *except* where the occupation is performed in a "non-explosives area" as defined in subparagraph 3. of this section.
2. The following occupations in or about any plant or establishment manufacturing or storing small arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:
    a. All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

- b. All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.
- c. All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.
- d. All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.
- e. All occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps.

Definitions

1. The term "plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.
2. The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835)
3. An area meeting all of the following criteria shall be deemed a "nonexplosives area":
    - a. None of the work performed in the area involves the handling or use of explosives;
    - b. The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;
    - c. The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and
    - d. Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria a. through c.

Motor Vehicle Occupations (Order No. 2)

The occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in 29 CFR 570.68(a) are prohibited for minors between 16 and 18 years of age *except* as provided in the following exemptions:

Exemptions

1. Incidental and occasional driving. The finding and declaration in this Order shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; provided, such operation is only occasional and incidental to the child's employment; that the child holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course; and provided further, that the vehicle is equipped with a seat belt or similar device for the driver and for each helper, and the employer has instructed each child that such belts or other devices must be used. This exemption shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.
2. School bus driving. The finding and declaration in this Order shall not apply to driving a school bus during the period of any exemption which has been granted in the discretion of the Secretary of Labor on the basis of an application filed and approved by the Governor of the State in which the vehicle is registered. The Secretary will notify any State which inquires of the information to be furnished in the application. Neither shall the finding and declaration in this Order apply in a particular State during a period not to exceed 40 days while application for such exemption is being formulated by such State seeking merely to continue in effect unchanged its current program using such drivers, nor while such application is pending action by the Secretary.

Definitions

1. The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.
2. The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.
3. The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
4. The term "gross vehicle weight" includes the truck chassis with lubricants, water, and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload.

Coal Mine Occupations (Order No. 3)

All occupations in or about any coal mine are prohibited *except* the occupations of slate or other refuse picking at a picking table or picking chute in a tipple or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal-mining plant.

Definitions

1. The term "coal" shall mean any rank of coal, including lignite, bituminous, and anthracite coals.
2. The term "all occupations in or about any coal mine" shall mean all types of work performed in any underground working, open pit, or surface part of any coal-mining plant that contributes to the extraction, grading, cleaning, or other handling of coal.

Logging and Sawmilling Occupations
(Order No. 4)

All occupations in logging and all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill are prohibited *except* the following:

1. Exceptions applying to logging:
    - a. Work in offices or in repair of maintenance shops.
    - b. Work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps.
    - c. Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrolman away from the actual logging operations: *Provided*, that the provisions of this paragraph shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.
    - d. Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section.
    - e. Work in the feeding or care of animals.
2. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill; *Provided*, that these exceptions do not apply to a portable sawmill the lumber yard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained: and *Further provided*, that these exceptions do not apply to work which entails entering the sawmill building:
    - a. Work in offices or in repair or maintenance shops.
    - b. Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.
    - c. Pulling lumber from the dry chain.
    - d. Cleanup in the lumberyard.
    - e. Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.
    - f. Clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks.
    - g. Cleanup work outside shake and shingle mills, *except* when the mill is in operation.
    - h. Splitting shakes manually from pre-cut and split blocks with a froe and mallet, *except* inside the mill building or cover.
    - i. Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, *except* inside the mill building or cover.
    - j. Manual loading of bundles of shingles or shakes into trucks or railroad cars, *provided* that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

Definitions

1. The term "all occupations in logging" shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting, and unloading of such products in connection with logging; the constructing, repairing, and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency fire-fighting.
2. The term "all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts in sawn lumber, laths, shingles, or cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing-mill or remanufacturing plant not a part of a sawmill.

Power-Driven Woodworking Machine Occupations
(Order No. 5)

The following occupations involved in the operation of power-driven woodworking machines are prohibited:

1. The occupation of operating

power-driven woodworking machines including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.
2. The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.
3. The operations of off-bearing from circular saws and from guillotine-action veneer clippers.

Definitions

1. The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.
2. The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (a) the removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (b) the following operations when they do not involve the removal of material or refuse directly from a saw table or from a point of operation: the carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

Exemptions

The exemption for apprentices and student-learners apply to this Order, see page 12.

Occupations Involving Exposure to Radioactive Substances and to Ionizing Radiations
(Order No. 6)

The following occupations are prohibited:

1. Any work in any workroom in which (a) radium is stored or used in the manufacture of self-luminous compound; (b) self-luminous compound is made, processed, or packaged; (c) self-luminous compound is stored, used, or worked upon; (d) incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; (e) other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and In Water for Occupational Exposure," issued June 5, 1959.
2. Any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

Definitions

As used in this section:

1. The term "self-luminous compound" shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element.
2. The term "workroom" shall include the entire area bounded by walls of solid material and extending from floor to ceiling.
3. The term "ionizing radiations" shall mean alpha and beta particles, electrons, protons, neutrons, gamma, and x-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and x-ray.

Power-Driven Hoisting Apparatus Occupations
(Order No. 7)

The following occupations involved in the operation of power-driven hoisting apparatus are prohibited:

1. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, *except* operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding 1 ton capacity.
2. Work which involves riding on a manlift or on a freight elevator, *except* a freight elevator operated by an assigned operator.
3. Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

Definitions

1. The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines) but shall not include dumbwaiters.
2. The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingotpouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, simigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.
3. The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent

members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff-leg derricks.

4. The term "hoist" shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.
5. The term "high-lift truck" shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork, or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known under such names as forklifts, fork trucks, forklift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.
6. The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain, or similar method of suspension; such belt, cable, or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

Exception

This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

Definitions as used in this exception:

1. For the purpose of this exception the term "automatic elevator" shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.
2. For the purpose of this exception, the term "automatic signal operation elevator" shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

Power-Driven Metal Forming, Punching, and Shearing Machine Occupations (Order No. 8)

The following occupations are prohibited:

1. The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:
   a. All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.
   b. All pressing or punching machines, such as punch presses *except* those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.
   c. All bending machines, such as apron brakes and press brakes.
   d. All hammering machines, such as drop hammers and power hammers.
   e. All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.
2. The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

Definitions

1. The term "operator" shall mean a person who operates a machine covered by this Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or removing them from the machine.
3. The term "forming, punching, and shearing machines" shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

NOTE: This Order does not apply to a very large group of metal-working machines known as machine tools. Machine tools are defined as "power-driven complete metal-working machines having one or more tool-or work-holding devices, and used for progressively removing metal in the form of chips." Since the Order does not apply to machine tools, the 18-year age minimum does not apply. Such machine tools are classified below so that they can be readily identified.

MILLING FUNCTION MACHINES
Horizontal Milling Machines
Vertical Milling Machines
Universal Milling Machines
Planer-type Milling Machines
Gear Hobbing Machines
Profilers
Routers

TURNING FUNCTION MACHINES
Engine Lathes
Turret Lathes
Hollow Spindle Lathes
Automatic Lathes
Automatic Screw Machines

PLANING FUNCTION MACHINES
Planers
Shapers
Slotters
Broaches
Keycasters
Hack Saws

GRINDING FUNCTION MACHINES
Grinders
Abrasive Wheels
Abrasive Belts
Abrasive Disks
Abrasive Points
Polishing Wheels
Buffing Wheels
Stroppers
Lapping Machines

BORING FUNCTION MACHINES
Vertical Boring Mills
Horizontal Boring Mills
Jig Borers
Pedestal Drills
Radial Drills
Gang Drills
Upright Drills
Drill Press, etc.
Centering Machines
Reamers
Honers

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations in Connection With Mining, Other Than Coal (Order No. 9)

All occupations in connection with mining, other than coal, are prohibited *except* the following:

1. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.
2. Work in the operation and maintenance of living quarters.
3. Work outside the mine in surveying, in the repair and maintenance of roads, and in general cleanup about the mine property such as clearing brush and digging drainage ditches.
4. Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that such building and maintenance work is being done.
5. Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.
6. The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process:
   a. Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters.
   b. Work of hand sorting at picking table or picking belt.
   c. General cleanup work.

Provided, however, that nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

Definitions

As used in this section: The term "all occupations in connection with mining, other than coal" shall mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand, or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing, or cleaning operations performed upon the extracted minerals *except* where such operations are performed as a part of a manufacturing process. The term shall not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded, and further processed, or plants manufacturing clay, glass, or ceramic products. Neither shall the term include work performed in connection with coal mining, in petroleum production, in natural-gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

Occupations Involving Slaughtering, Meat-Packing or Processing, or Rendering (Order No. 10)

The following occupations in or about slaughtering and meat-packing establishments, rendering plants, or wholesale, retail or service establishments are prohibited:

1. All occupations on the killing floor, in curing cellars, and in hide cellars, *except* the work of messengers, runners, hand-truckers, and similar occupations which require entering such workrooms or workplaces infrequently and for short periods of time.
2. All occupations involved in the recovery of lard and oils, *except* packaging and shipping of such products and the operations of lard-roll machines.
3. All occupations involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.
4. All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including the occupations of setting-up, adjusting, repairing, oiling, or cleaning such machines: meat patty forming machines, meat and bone cutting saws, knives (**except* bacon-slicing machines), head splitters, and guillotine cutters; snout pullers and jaw pullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (*except* belly-rolling machines).
5. All boning occupations.
6. All occupations that involve the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.
7. All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions

1. The term "slaughtering and meat-packing establishments" shall mean places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses are killed, butchered, or processed. The term shall also include establishments which manufacture or process meat products or sausage casings from such animals.
2. The term "rendering plants" shall mean establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.
3. The term "killing floor" shall include that workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.
4. The term "curing cellar' shall include that workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include that workroom or workplace where meats are smoked.
5. The term "hide cellar" shall include that workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.
6. The term "boning occupations" shall mean the removal of bones from meat cuts. It shall not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

NOTE: This Order shall not apply to the killing and processing of poultry, rabbits, or small game in areas physically separated from the "killing floor".

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Power-Driven Bakery Machine Occupations (Order No. 11)

The following occupations involved in the operation of power-driven bakery machines are prohibited:

1. The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer, batter mixer, bread dividing, rounding, or molding machine; dough brake; dough sheeter, combination bread slicing and wrapping machine; or cake cutting band saw.
2. The occupation of setting up or adjusting a cooky or cracker machine.

NOTE: This Order does not apply to the following list of bakery machines which may be operated by 16 and 17-year-old minors:

INGREDIENT PREPARATION AND MIXING

Flour-sifting Machine Operator
Flour-blending Machine Operator
Sack-cleaning Machine Operator

PRODUCT FORMING AND SHAPING

Roll-dividing Machine Operator
Roll-making Machine Operator
Batter-sealing Machine Operator
Depositing Machine Operator
Cooky or Cracker Machine Operator
Wafer Machine Operator
Pretzel-stick Machine Operator
Pie-dough Sealing Machine Operator
Pie-dough Rolling Machine Operator
Pie-crimping Machine Operator

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*Note: The term "bacon-slicing machines" as used in this Order refers to those machines which are designed solely for the purpose of slicing bacon and are equipped with enclosure or barrier guards that prevent the operator from coming in contact with the blade or blades, and with devices for automatic feeding, slicing, shingling, stacking, and conveying the sliced bacon away from the point of operation.

FINISHING AND ICING

Depositing Machine Operator
Enrobing Machine Operator
Spray Machine Operator
Icing Mixing Machine Operator

SLICING AND WRAPPING

Roll Slicing and Wrapping Machine Operator
Cake Wrapping Machine Operator
Carton Packing and Sealing Machine Operator

PAN WASHING

Spray-type Pan Washing Machine Operator
Tumbler-type Pan Washing Machine Operator

Power-Driven Paper-Products Machine Occupations
(Order No. 12)

The following occupations are prohibited:

1. The occupations of operating or assisting to operate any of the following power-driven paper-products machines:
   a. Arm-type wirestitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.
   b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.
2. The occupations of setting up, adjusting, repairing, oiling or cleaning these machines including those which do not involve hand feeding.

Definitions

1. The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this Order, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.
2. The term "paper-products machine" shall mean power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacture converted paper pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

NOTE: There are many machines not covered by this Order. The most important of these machines are the following:

Bag Machine, Bag-Making Machine
Bottoming Machine (Bags)
Box-Making Machine (Collapsible Boxes)
Bundling Machine
Calendar Roll and Plating Machines
Cigarette Carton Opener and Tax Stamping Machine
Clasp Machine
Counting, Stacking, and Ejecting Machine
Corner Stayer
Covering, Lining, or Wrapping Machines (Set-up Boxes)
Creping Machine
Dornbusch Machine (Wall Paper)
Ending Machine (Set-up Boxes)
Envelope Machine
Folding Machine
Gluing, Scaling, or Gumming Machine
Interfolding Machine
Jogging Machine
Lacer Machine
Parchmentizing, Waxing, or Coating Machines
Partition Assembling Machine
Paper Cut Machine
Quadruple Stayer
Rewinder
Rotary Printing Press
Ruling Machine
Slitting machine
Straw Winder
Stripping Machine
Taping Machine
Tube Cutting Machine
Tube Winder
Tube Machine (Paper Bags)
Window Patch Machine
Wire or Tag Stringing Machine

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations Involved in the Manufacture of Brick, Tile, and Kindred Products
(Order No. 13)

The following occupations involved in the manufacture of clay construction products and of silica refractory products are prohibited:

1. All work in or about establishments in which clay construction products are manufactured, *except* (a) work in storage and shipping, (b) work in offices, laboratories, and storerooms, and (c) work in the drying departments of plants manufacturing sewer pipe.
2. All work in or about establishments in which silica brick or other silica refractories are manufactured *except* work in offices.
3. Nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupations order issued by the Secretary of Labor.

Definitions

1. The term "clay construction products" shall mean the following clay products: Brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term shall not include the following non-structural-bearing clay products: Ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor shall the term include non-clay construction products such as sand-lime brick, glass brick, or non-clay refractories.
2. The term "silica brick or other silica refractories" shall mean refractory products produced

from raw materials containing free silica as their main constitutent.

Occupations Involved in the Operation of Power-Driven Circular Saws, Band Saws, and Guillotine Shears (Order No. 14)

The following occupations are prohibited:

1. The occupations of operator of or helper on the following power-driven fixed or portable machines *except* for machines equipped with full automatic feed and ejection:
   a. Circular saws.
   b. Band saws.
   c. Guillotine shears.
2. The occupations of setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

Definitions

1. The term "operator" shall mean a person who operates a machine covered by this Order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.
2. The term "helper" shall mean a person who assists in the operation of a machine covered by this Order by helping place materials into or removing them from the machine.
3. The term "machine equipped with full automatic feed and ejection" shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.
4. The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.
5. The term "band saw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.
6. The term "guillotine shear" shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations Involved in Wrecking, Demolition, and Shipbreaking Operations (Order No. 15)

All occupations in wrecking, demolition, and shipbreaking operations are prohibited.

Definitions

The term "wrecking, demolition, and shipbreaking operations" shall mean all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

Occupations in Roofing Operations (Order No. 16)

All occupations in roofing operations are prohibited.

Definitions

The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing, and (2) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see page 12.

Occupations in Excavation Operations (Order No. 17)

The following occupations in excavation operations are prohibited:

1. Excavating, working in, or backfilling (refilling) trenches, *except* (a) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (b) working in trenches that do not exceed four feet in depth at any point.
2. Excavating for buildings or other structures or working in such excavations, *except* (a) manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (b) working in an excavation not exceeding such depth, or (c) working in an excavation where the side walls are shored or sloped to the angle of repose.
3. Working within tunnels prior to the completion of all driving and shoring operations.
4. Working within shafts prior to the completion of all sinking and shoring operations.

(continued on next page)

Exemptions

The exemptions for apprentices and student-learners apply to this Order, see below.

Exemptions From Hazardous Occupations Orders

Hazardous Occupations Orders Nos. 5, 8, 10, 12, 14, 16, and 17 contain exemptions for 16 and 17-year-old apprentices and student-learners provided they are employed under the following conditions:

I. Apprentices: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such Federal or State standards.

II. Student-Learners: (1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school; and (2) such student-learner is employed under a written agreement which provides: (i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training; (ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; (iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and (iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which training has been completed as provided in this paragraph as a student-learner, even though the youth is not yet 18 years of age.

Penalties For Violation

For each violation of the child labor provisions or any regulation issued thereunder, employers may be subject to a civil money penalty up to $1,000.

The Act was amended, effective May 1, 1974, authorizing (in section 16(e)) the Secretary of Labor to assess a civil money penalty of not to exceed $1,000 for each violation of the child labor provisions of the Act or any regulation issued thereunder. When a child labor civil money penalty is assessed against an employer, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations of the child labor provisions occurred. When such an exception is filed with the Administrator of the Wage and Hour Division, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing the employer may, or an attorney retained by the employer may, present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if an exception is filed pursuant to the decision and order of the administrative law judge.

The Act also provides, in the case of willful violation, for a fine up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000, or imprisonment for not more than 6 months, or both. The Secretary of Labor may also ask a Federal district court to restrain future violations of the child labor provisions of the Act by injunction.

Age Certificates

Employers may protect themsleves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to show that the minor is the minimum age for the job. Certificates issued under most State laws are acceptable for purposes of the Act.

Additional Information

Inquiries about the Fair Labor Standards Act will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under U.S. Department of Labor in the U.S. Government listing. These offices also supply publications free of charge.

• U.S. Government Printing Office: 1990-262-288/26245

Application for Special Worker Certificate

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

APPENDIX C

PLEASE READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM

[redacted]

1. Is this application for an ☐ Initial or a ☐ Renewal certificate?

2. Name of employer :

3. Address and telephone number of the establishment where the worker will be employed:

Telephone number: (   ) ______________

4. Employer's type of business

5. Name of worker *(Last name, first, middle initial)*:

6. Home address of worker:

7. Worker's birth date: ___/___/___

8. How long has the worker been employed by the firm?

How long at the present job?

9. Occupation in which worker is to be employed *(Describe if job title is not self-explanatory)*:

10. Nature of worker's disability *(If this is an initial application and the disability is not obvious, complete the Report of Medical Examination, Items 21 through 25.)*

☐ mentally retarded *(MR)*
☐ mentally ill/emotionally disturbed *(ME)*
☐ other *(OT)* Describe in full ______________
☐ hearing impaired *(HI)*
☐ visually impaired *(VI)*
☐ orthopedic *(OR)*
☐ age *(AG)*

11. Amount firm proposes to guarantee worker in:

(a) CASH .... $ ______________ per hour
(b) Value of lodging, board or other facilities, if furnished $ ______________ per hour *(See 29 CFR Part 531)*

12. If worker is currently employed by the firm, provide the worker's earnings for the most recent four weeks.

WEEK ENDING DATE	HOURS WORKED	WEEKLY EARNINGS	AVERAGE HOURLY PAY
___/___/___		$.	$.
___/___/___		$.	$.
___/___/___		$.	$.
___/___/___		$.	$.

13. How much are other employees in the establishment who perform the same work described in item 9 paid?

BEST COPY AVAILABLE

COPY NO. 1

Form WH-222-MIS
Rev. January 1985

INSTRUCTIONS

1. This application is to be used to apply for a subminimum wage certificate for a worker under the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act and the Service Contract Act (SCA). If the worker will be employed on an SCA contract of more than $2,500, attach a separate piece of paper to the application showing: name of the prime contractor, contract number, dates of award and expiration, amount of the contract, applicable SCA wage determination(s), type of service, and the government agency name and location where the service will be performed.

2. This report is authorized under section 14(c) of the Fair Labor Standards Act. While completion of this form is voluntary, authority to pay less than the applicable minimum wage WILL NOT BE GRANTED unless a properly completed application is submitted. Disability and medical information will be kept confidential.

3. Workers employed at less than the applicable minimum wage must be handicapped for the work they perform and must be paid commensurate wage rates. "Commensurate wage" means wages related to the worker's productivity. The wage rate requested on this application should be commensurate with that paid experienced nonhandicapped workers in industry maintaining acceptable labor standards for essentially the same type, quality and quantity of work. For example, the commensurate wage rate of a handicapped worker whose productivity is 50 percent of that of a nonhandicapped worker earning $6.00 per hour is $3.00 per hour.

4. Complete three copies of this form. Send the original to the Wage and Hour Division. The employer should keep one copy and the worker must receive one copy.

SPECIAL INSTRUCTIONS FOR SCHOOL WORK EXPERIENCE PROGRAM

The rehabilitation counselor or coordinating official of the school may submit a group application covering all of the students and all of the employers participating in a school work experience program. Employers are responsible for compliance with all applicable child labor laws, minimum wage standards, certificate and recordkeeping requirements. The students participating in a school work experience program must be paid commensurate wage rates.

Complete the following items:

2, 3 and 4----enter identifying information for the school
5 through 13--leave blank
14 --must be signed by the counselor or coordinating official of the school.

On a separate sheet, provide a list of:

(a) all participating employers (names, addresses, and types of businesses);
(b) all participating students (names, addresses, birth dates and graduation dates);
(c) the minimum hourly wage each employer has agreed to pay (This must be at least 50 percent of the applicable minimum wage.);
(d) the types of jobs each employer will offer;
(e) the nature of each student's disability (this may be done in code); and
(f) the signature of each student.

Note: It is necessary to notify the Wage and Hour Division when students or employers are added to the program. This may be done by letter.

SPECIAL INSTRUCTIONS FOR VOCATIONAL REHABILITATION COUNSELORS OR VETERANS ADMINISTRATION TRAINING OFFICERS

This form is for:

(a) Temporary authority to employ an on-the-job trainee (Complete items 2 through 12, 17a, 19 and 20);

(b) Extension of temporary authority (Complete items 2 through 12, 17b, 19 and 20); and

(c) Approval of a wage rate less than 50 percent of the applicable minimum (Complete items 18, 19 and 20).

BEST COPY AVAILABLE COPY NO. 2

SIGNATURES OF EMPLOYER AND SPECIAL WORKER

14. I certify that, to the best of my knowledge and belief, all statements are true and accurate.	Signature of employer or authorized official Printed or typed name and official title
15. I have read the statements in this application and ask that the requested certificates be granted.	Signature of special worker *(If worker cannot write, signature may be made by mark (X) and witnessed by another person.)*
16. Witness *(Required ONLY if worker's signature is made by mark (X).)*	Signature of witness.

FOR USE BY VOCATIONAL REHABILITATION COUNSELORS AND VETERANS ADMINISTRATION TRAINING OFFICERS ONLY

Items 17a or 17b, 19 and 20 must be completed by a State Vocational Rehabilitation counselor or by a Veterans Administration training officer for a temporary certificate.

17a. ☐ **Temporary certificate** issued by rehabilitation agency. *(May not be for more than 90 calendar days.)*

WAGE	FROM	TO
$	___/___/___	___/___/___

17b. ☐ **Extension of temporary certificate**

Check one: ☐ Do not extend.

☐ Extend as described below. *(May not be for more than 12 months.)*

WAGE	FROM	TO
$	___/___/___	___/___/___

Items 18, 19 and 20 must be completed by a State Vocational Rehabilitation counselor or a Veterans Administration training officer if the wage rate requested is less than 50 percent of the statutory minimum wage. A TEMPORARY CERTIFICATE MAY NOT BE ISSUED WITH A WAGE RATE OF LESS THAN 50 PERCENT OF THE STATUTORY MINIMUM WAGE.

18. Is this person's earning capacity so severely impaired that he/she is unable to earn at least 50 percent of the statutory minimum wage?
☐ Yes ☐ No If yes, furnish sufficient details to justify wage rate requested.

19. Name and title of vocational rehabilitation counselor or Veterans Administration training officer.

Name ____________________

Signature ____________________

Title ____________________

Area code and telephone number: ( ) _____ - _____

20. Name and address of vocational rehabilitation agency or Veterans Administration facility.

Name ____________________

____

Street ____________________

City __________ State ______ Zip __________

COPY NO. 3

BEST COPY AVAILABLE

REPORT OF MEDICAL EXAMINATION

This report is requested in connection with an application for a certificate authorizing the employment of the individual named in this application at a subminimum wage under a federal minimum wage law(s). A certificate will be granted only if the disability is handicapping for the work to be performed. Only a licensed physician may complete this section.

THE U.S. GOVERNMENT DOES NOT PAY FOR THIS EXAMINATION.

21. How and to what extent does the disability affect the applicant's ability to perform the type of work listed in item 9?

22. What is the prognosis?

23. Name and address, including Zip Code, of examining physician *(Print or type)*.	24. Physician's signature
	25. Date

Comments

COPY NO. 4

Page 4, Form WH-222-MIS
Rev. January 1985

FAIR LABOR STANDARDS ACT (29 USC 201 et seq.)

SECTION 14(c)

14 (c)[117a](1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

(A) lower than the minimum wage applicable under section 6,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

[117a] As amended by the Act of October 16, 1986 (100 Stat. 1229).

SUBMINIMUM WAGE CERTIFICATES
Issued Under the FLSA Which Can be Used for Students

CERTIFICATE	REGULATION	LOWEST % OF FEDERAL MINIMUM WAGE	LIMIT TO HOURS AT CERTIFICATE RATE?	APPLICATION FORM
FULL-TIME STUDENTS Worker attends school primarily in the daytime in a bona fide educational institution. Can be issued to retail and service establishments, agricultural employment, or to institutions of higher education.	Part 519	85% ($3.60/hr)	Yes: See Regulations	WH-200MIS Contact: Dallas, TX W/H Office
STUDENT LEARNERS Age 16 or older. Worker is receiving instruction in an accredited school, college or university and is employed on a part-time basis pursuant to a bona fide vocational training program with organized plan of instruction in technical and industrial areas requiring substantial learning period.	Part 520	75% ($3.19/hr)	Yes: See Regulations	WH-205
APPRENTICES IN SKILLED TRADES Generally, age 16 or older. Allows for the employment of apprentices in skilled trades. The minor must be employed in a craft recognized as an apprenticeable trade. The apprenticeship must be registered with the DOL.	Part 521	50% of the journeyman's rate per the apprenticeship agreement authorized by a registered apprenticeship program.	Yes: See Regulations	Application is the apprenticeship agreement
LEARNER'S IN SPECIFIED INDUSTRIES Applicable to employment of learners in specified industries where an adequate supply of qualified experienced workers is not available for employment. Learner is a worker whose total experience in the industry within the past three years is less than the period of time allowed as a learning period for that occupation.	Part 522	Authorized wage rates are industry specific.	Yes: See Regulations	WH-209 WH-208 WH-359
MESSENGERS Allows for the employment of messangers to be engaged primarily in delivering letters and messages.	Part 523	There have been no messenger certificates issued in many years.	N/A	No application form is available
SHELTERED WORKSHOP/WORKERS WITH DISABILITIES Worker's earning capacity is impaired by disability for the work to be performed. Issued to most tupes of establishments and school work experience programs. Sheltered workshop or work centers meaning a program providing workers with disabilities with employment or other occupational rehabilitating activity.	Part 525	Commensurate wages; no minimum	No	WH-226MIS
STUDENT WORKERS Age 16 or older. The occupation for which the student-worker receives training must require a sufficient degree of skill to necessitate an appreciable learning period. Student-worker is a student who is receiving instruction in an educational institution and who is employed on a part-time basis in shops owned by the eudcational institution for the purpose of enabling the student to defray part of school expenses.	Part 527	75% ($3.19/hr)	Yes: See Regulations	For application contact ESA, Wage-Hour, Branch of Special Employment Programs Office

APPENDIX D

LS-37 (6/91)

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION
P.O. BOX 8928, MADISON, WISCONSIN 53708

APPLICATION FOR A SPECIAL MINIMUM WAGE LICENSE

A special minimum wage license may be issued to an employer to permit the employment of individual employes at a lesser hourly wage than prescribed by Section Ind 72.03. Such license will cover only those workers who are unable to earn the minimum wage, or who are student learners. The rate paid must be commensurate with the worker's ability and productivity. The following definitions and policies shall be used when issuing such licenses, and as stated in 72.09 enclosed.

(1) "Handicapped" worker means an individual whose earning capacity is impaired by age, or physical, or mental or social disability.

(2) "Student Learner" means a student of an accredited school who is employed on a part-time basis, under a bona fide written school-work training program agreement, to obtain both scholastic credit and employment training.

(3) "Sponsoring Agency" means a sheltered workshop, governmental agency or a nonprofit charitable organization or institution carrying out an occupational rehabilitating activity of an educational or therapeutic nature.

(4) Two types of "handicapped" worker licenses may be granted by the department.

  (a) A type 1 is a license issued to a specific employer to employ a handicapped worker in their establishment.

  (b) A type 2 license shall be requested by a sponsoring agency on behalf of a handicapped worker. A type 2 license may be issued by the department to a handicapped worker and will authorize any employer to pay the rate of pay stated on the license. An employer who hires a licensed handicapped worker shall retain a photocopy of the license for the employer's records. This license may be issued for a period of time not to exceed one year.

  Note: The intent of issuing a type 2 license to the handicapped worker instead of to the employer is to permit the sponsoring agency to make short-term placements which would enable the handicapped worker to gain a variety of experiences without putting the burden on each employer to obtain a license. This should not be interpreted as relieving any employer from complying with the federal Fair Labor Standards Act which requires an individual special minimum wage certificate be issued to the federally-covered employer.

(5) The license shall be granted for a specific individual only, and only for a designated period of time. Minimum wage must be paid the employe until the license is granted, unless renewing. Licenses are issued EFFECTIVE THE DATE THE APPLICATION IS RECEIVED in the Department's office or a specified later date as requested on the application. It shall provide a minimum rate below which the employe may not be paid.

(6) EMPLOYMENT RECORDS TO BE KEPT. In addition to the records required in Ind 72.11, the employer shall keep the following:

FOR STUDENT LEARNER:

(a) The student shall be identified on the payroll records, showing occupation and rate of pay.

(b) The employer's copy of the license and training agreement must be available at all times for inspection for a period of three years.

RECORDS TO BE KEPT BY EMPLOYERS:

(a) Every employer of workers under a special minimum wage license, or the referring agency or facility in the case of records verifying a worker's disabilities, shall maintain and have available for inspection the records specified in this subsection.

(1) Verification of the worker's disability.

(2) Evidence of the productivity of each worker with a disability which has been gathered on a continuing basis or at periodic intervals which do not exceed six months in the case of employes paid hourly wage rates.

(3) The prevailing wage paid to a worker who is not disabled for the job performed and who is employed in industry in the vicinity for the same type of work using similar methods and equipment as that used by the worker with a disability employed under the special minimum wage license.

(4) The production standards and supporting documentation for non-disabled workers for each job being performed by a worker with disabilities employed under the special license.

(5) In the case of workers with disabilities who are employed by a recognized non-profit rehabilitation facility and who are working in or about a home, apartment, or room in the residential establishment the records required under s. Ind 72.11.

(6) The employer shall maintain and preserve the records required by this section for 3 years.

(7) A license may be granted to employ the worker at a wage less than the minimum wage if the following conditions exist and application and documentation are received as per Ind 72.09:

(a) The worker is so handicapped that he or she is unable to earn the minimum wage, or

(b) The employer is carrying out a recognized rehabilitation program— medical, therapeutic, or educational—and the handicapped person may learn and gain experience.

(c) The student learner is in a bona fide school training program.

(8) REFUSAL TO ISSUE AND REVOCATION OF LICENSE. The Department may refuse to issue a license or may revoke, amend or modify any license it has issued, if, in its opinion, conditions or extraordinary circumstances warrant such action.

NOTE: The issuance of this license will not relieve an employer from responsibility under the Federal Minimum Wage Law. Write to the Regional Office of the U.S. Department of Labor, Wage and Hour Division, 230 South Dearborn Street, Chicago, Illinois 60604.

DO NOT USE THIS SPACE

Approved /___/ Denied /___/

Commensurate Rate	From	To

APPLICATION FOR A SPECIAL MINIMUM WAGE LICENSE
for
INDIVIDUALS AND STUDENT LEARNERS

IF YOU HAVE AN EMPLOYE WHO QUALIFIES FOR A SPECIAL MINIMUM WAGE LICENSE, COMPLETE THE FOLLOWING QUESTIONNAIRE.

Prerequisite: Knowledge of IND 72.09 enclosed. Date of Application ____________

EMPLOYER (Not needed/Handicapped Type 2 License)	EMPLOYE
Business Name ____________	Name ____________
Address ____________	Address ____________
City, State, Zip ____________	City, State, Zip ____________
Owner ____________	Age ____________
Nature of Business ____________	Date of Birth ____________

1. Type of program: _____ Handicapped Worker Type 1 _____ Renewal (Complete #9, 10, 11, 13, 14 & 15 ONLY)

   _____ Handicapped Worker Type 2 _____ Student Learner

   _____ Temporary 90-day Wage for disabled veteran; vocational rehabilitation (Submit within 10 days of signing.)

2. What duties will this employe be expected to perform?

3. Describe the nature and extent of the disabilities of the employe in full.

4. Explain how these disabilities relate to the employe's productivity.

5. What was highest grade level in school obtained by employe?

6. Describe any vocational training received by this employe:

7. If the type of work to be performed by the licensed employe is primarily performed by nondisabled persons in the employer's work force, list the job title, brief job description and prevailing wage paid the experienced nondisabled employe performing similar work (also applies to sponsoring agency):

8. If the type of work to be performed by the licensed employe is now primarily performed by disabled employes in the employer's workforce, the employer may determine the prevailing wage rate by surveying 3 comparable businesses in the area for similar work and rates of pay for nondisabled workers. Or the employer can use federal bureau of statistics, job service, or an employment service which provides above entry-level wages (does not apply to sponsoring agency).

Job Title:
Brief description of work to be performed.

Prevailing wage:

List source(s):

9. Commensurate Wage employer will guarantee worker: $ __________ per hour.

ATTACH documentation of productivity tests, information, dates showing the rate arrive at for the handicapped worker.

10. Scheduled hours of work per day: ________________ per week: ________________

11. List dates you wish this license to cover: From ____________ to ____________. (Minimum wage must be paid until the effective date of the license. Licenses cannot be back dated.) (If you are renewing, prior license is in effect until this application is granted or denied.)

12. STUDENT LEARNER information: [Review IND 72.09(15)]

(a) Name and address of school:

(b) ATTACH copy of program or signed training agreement.

(c) Wage rate cannot be less that 75% of current minimum wage unless handicapped worker.

13. Signature of Employe __________________________________ Date ________________

Signature of Parent or Guardian (if Student Learner Program)

__________________________________ Date ________________

Signature of School Official for Student Learner

__________________________________ Date ________________

Signature of Representative of State Agency or Department of Veterans Affairs for 90-day temporary authority:

__________________________________ Date ________________

Agency ______________________________________

14. EMPLOYER'S WRITTEN ASSURANCE:

(1) The wage rates of all hourly-rated employes paid in accordance with Chapter IND 72.09 of the Wisconsin Administrative Code will be reviewed at least every six (6) months and

(2) Wages paid to all employes under IND 72.09 will be adjusted at periodic intervals at least once a year to reflect changes in the prevailing wage paid experienced non-handicapped workers employed in the vicinity for essentially the same type of work.

(3) Hours worked over 40 in a 7-consecutive day week must be paid at time and one-half the regular rate of pay.

(4) Time and payroll records shall be kept in accordance with IND 72.11.

Signature of Employer ______________________ Date ______________

(Not needed if Type 2 Handicapped Worker. It is assumed the sponsoring agency of this license will oversee this assurance.)

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15. Sponsoring Agent or Agency: ______________________

Signature of Authorizing Official ______________________

Title ______________________

Address ______________________

City, State, Zip ______________________

Date ____________ Telephone ____________

SEND THIS APPLICATION TO:

Equal Rights Division
Department of Industry, Labor and Human Relations
P.O. Box 8928
Madison, WI 53708

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
230 South Dearborn Street
Room 562A
Chicago, Illinois 60604-1591
Telephone: (312) 353-8845

Reply to the Attention of: SWHCS Robert Halson
Telephone: (312) 353-7246

APPENDIX E

October 29, 1987

This is in response to your letter of October 20, 1987 regarding community volunteer service experience for people with severe disabilities. Your letter requests clarification of what is a volunteer and what are bona fide volunteer activities.

Volunteers are individuals, who, for example, donate their services to a religious, charitable, or similar nonprofit organization for civic or personal motives of their own, without promise or expectation of compensation, at hours that suit their convenience, whether by schedule or otherwise, and who do not replace regular employees in the performance of their normal duties.

There is no all inclusive list of what constitute bona fide volunteer activities. Individuals may, for example, volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross; provide certain personal services for the sick or elderly in hospitals or institutions; assist in a school library or cafeteria as a public duty to maintain effective services for their children; work with retarded or handicapped children or disadvantaged youth; solicit contributions or participate in benefit programs for charitable, educational, or religious organizations; and so forth.

It is the position of the Wage and Hour Division that clients in rehabilitation programs cannot be termed "volunteers" when they are placed through the rehabilitation agency or a nonprofit placement network in positions which are used to provide training or work experience to the client.

However, under certain conditions the clients may qualify as bona fide trainees, not subject to the provisions of the Fair Labor Standards Act.

The Supreme Court has held that the words "suffer or permit to work", as used in the FLSA to define "employ", do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the FLSA will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the FLSA:

> (1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
>
> (2) the training is for the benefit of the trainees or students;
>
> (3) the trainees or students do not displace regular employees, but work under their close observation;
>
> (4) the employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the employer's operations may actually be impeded;
>
> (5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
>
> (6) the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

The Supreme Court has held that where all of these conditions are met, there is no employer-employee relationship subject to the wage requirements of FLSA with respect to the trainees or students. Conversely, where all of these criteria are not met the trainees will be regarded as employees under the FLSA.

We trust that this has been fully responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Richard A. McMahon, Jr.
Assistant Regional Administrator
Wage and Hour Division

Enclosure

This is in response to your letter of May 6 in which you attached a copy of an opinion letter dated October 29, 1987, developed by the Chicago Wage and Hour Regional Office regarding community volunteer service experience for people with severe disabilities. You believe that disabled individuals should have the right to perform volunteer work if they so choose, and the rehabilitation facility would be the most logical service provider to arrange such volunteer placement. You request that we review the opinion and inform you of our decision with respect to volunteer work performed by clients of rehabilitation facilities.

The opinion letter was developed in response to a request received for further clarification and information regarding the Department's policy with respect to volunteer services under the Fair Labor Standards Act (FLSA). The requestor, Mr.
, indicated that
was considering the implementation of a new program concept which would center around coordinating community volunteer service experience for individuals with severe mental disabilities.

Section 3(g) of FLSA defines "employ" as "to suffer or permit to work." However, the Supreme Court has made it clear that FLSA was not intended "to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another." In administering FLSA, the Department uses this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar nonprofit organizations which receive their services.

For example, members of civic organizations may send members into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in school libraries or cafeterias as a public duty to maintain effective services for their children; or fathers may drive school buses to carry football teams or bands on trips. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious program. The fact that services are performed under such circumstances is not sufficient to create an employee-employer relationship. As you will note, several of these volunteer activities were listed in the October 29, 1987, opinion letter.

In situations where sheltered workshops have established rehabilitation programs in which clients are placed through the rehabilitation agency or a nonprofit placement network in positions which are used to provide career exploration, and/or work experience and training, it is the position of the Department that these clients are not "volunteers" within the meaning of FLSA. The October 29, 1987, letter developed by the Chicago Regional Office correctly reflects the Department's position with respect to programs involving the placement of clients by the rehabilitation agency or a nonprofit placement network in positions for work experience and training purposes.

Whether an employment relationship would exist with respect to a particular program encompassing community volunteer service experience for disabled individuals referred by sheltered workshops would depend upon all of the facts surrounding the program. We would be pleased to review the program that wishes to implement in this regard, and to submit a determination regarding its application to FLSA.

With respect to your question concerning liability of back wage payments, in the event that an employment relationship is determined to exist, back wages would be due from the "employer." In the situation you describe, the employer would be the party which received the benefit of the client's services, i.e. the firm or organization where the client was placed.

We trust that the above information is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Paula V. Smith
Administrator

BEST COPY AVAILABLE